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Rules and Regulations

Federal Register
Vol. 64, No. 243
Monday, December 20, 1999

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA–00–02]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain sections of the Southern Illinois-Eastern Missouri Federal milk marketing order (Order 32). The suspension removes a portion of the pool supply plant definition of Order 32. The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), and is necessary to prevent inefficient movements of milk and to ensure that producers historically associated with Order 32 will continue to have their milk priced and pooled under the order.

EFFECTIVE DATE: December 1, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690–1932, e-mail address nicholas.memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 23, 1999; published December 1, 1999 (64 FR 67201).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 1999, 1,312 dairy farmers were producers under Order 32. Of these producers, 1,277 producers (i.e., 97%) were considered small businesses. For the same month, 10 handlers were pooled under Order 32, of which three were considered small businesses.

The supply plant shipping standard is designed to ensure that the market's fluid needs will be met. The suspension will allow a supply plant operated by a cooperative association that delivered milk to Order 32 pool distributing plants during each of the months of September 1998 through August 1999 to meet the Order's pool supply plant standard by shipping at least 25 percent of its milk to pool distributing plants during the month of December 1999.

Marketing conditions in Order 32 indicate that there should be a sufficient amount of local milk available during the requested suspension period to supply the fluid needs of the market. The suspension should reduce or eliminate the need to make uneconomical and inefficient movements of milk simply to meet the Order's supply plant shipping standard. Thus, this rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Statement of Consideration

This rule suspends a portion of the pool supply plant definition of the Southern Illinois-Eastern Missouri Federal milk marketing order for the month of December 1999. The action allows a plant operated by a cooperative association to qualify as a pool supply plant by shipping at least 25 percent of its milk to pool distributing plants during December 1999 if such plant delivered milk to Order 32 pool distributing plants during each of the immediately preceding months of September 1998 through August 1999. Without the suspension, such plants would have to meet the minimum 25 percent pool supply plant standard and at least 75 percent of the total producer milk marketed in that 12-month period would have to have been delivered or

physically received at pool distributing plants to qualify as a pool supply plant.

In Prairie Farms' letter requesting the suspension, the cooperative indicates that they currently operate processing plants in Carlinville, Olney, and Quincy, Illinois, and a multi-product plant in Granite City, Illinois, which are all regulated under the Southern Illinois-Eastern Missouri order. Prairie Farms notes that, from fiscal year 1998 to fiscal year 1999, milk processed at their Order 32 plants was approximately 6 percent higher and milk production of their member producers also increased about 8 percent. Based on current market trends and experiences in prior years, the cooperative expects an increase in milk production from its member producers during December 1999. Accordingly, it anticipates having a problem pooling all of its member producers' milk and the milk of its suppliers during the proposed suspension period.

Prairie Farms states that the suspension would provide some relief for December 1999 and prevent large amounts of milk from being disassociated with the order. The cooperative contends that the action is necessary to prevent inefficient movements of milk and to ensure that producers historically associated with Order 32 will continue to have their milk priced and pooled under the order. The cooperative points out that a portion of the supply plant provision was suspended in December 1994 and January 1995 for virtually the same reasons.

A notice of proposed rulemaking was published in the **Federal Register** on December 1, 1999 (64 FR 67201), concerning the proposed suspension. Interested persons were afforded an opportunity to file written data, views and arguments thereon. One comment letter, from Land O'Lakes, Inc., was received. Land O'Lakes, stated that it supported the proposed suspension and that their ability to keep their milk pooled under the Southern Illinois order would be jeopardized without it. No comments were received in opposition to the suspension.

The letter from Prairie Farms requesting this suspension requested a 2-month suspension period, from December 1999 through January 2000. This 2-month suspension period was supported in the data, views, and comments submitted by Prairie Farms and Land O'Lakes. However, on December 8, 1999, the Department issued an order implementing 11 new consolidated Federal orders on January 1, 2000. Accordingly, there is no reason to suspend provisions from the Southern Illinois-Eastern Missouri order for the month of January 2000 because that order will cease to exist on January 1, 2000.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Order 32 marketing area will continue to benefit from pooling and pricing under the order. With the suspension, Order 32 supply plants will still be required to serve the Class I needs of the market. However, the suspension should reduce or eliminate the need to make expensive and inefficient movements of milk simply to meet the Order's supply plant shipping standard.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that for the period of December 1, 1999, through December 31, 1999, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words ''and 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered'' and the words ''and physically received at''.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment was received in support of the action; none were received in opposition to it.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1032 is amended as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1032.7 [Suspended in part]

2. In § 1032.7 paragraph (b), the words ''and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered'' and the words ''and physically received at'' are suspended effective December 1, 1999, through December 31, 1999.

Dated: December 14, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–32905 Filed 12–17–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 99–20]

RIN 1557–AB69

Community Development Corporations, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is changing its regulation governing national bank investments that are designed primarily to promote the public welfare. This final rule simplifies the prior notice and self-certification requirements that apply to national banks' public welfare investments; permits eligible national banks to self-certify any public welfare investment; includes the receipt of Federal low-income housing tax credits by the project in which the investment is made (directly or through a fund that invests in such projects) as an additional way of demonstrating community support or participation for a public welfare investment; expands the types of investments that a national bank may self-certify by removing geographic restrictions; clarifies that the list of investments that were authorized

to be made without prior approval now is illustrative of eligible public welfare investments; revises and expands the illustrative list of eligible public welfare investments; removes the private market financing requirement for public welfare investments; and makes clarifying and technical changes.

Taken together, these changes will simplify procedural requirements and will make it easier for national banks to make public welfare investments, consistent with the underlying statutory authority.

DATES: January 19, 2000.

FOR FURTHER INFORMATION CONTACT: Barry Wides, Director, Community Development Division, (202) 874–4930; Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874–5750; or Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The Proposal

On June 10, 1999, the OCC published a notice of proposed rulemaking (proposal) to amend 12 CFR part 24, the OCC's rule governing national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. 64 FR 31160. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low-and moderate-income communities and families, subject to certain percentage of capital limitations. (The investments authorized pursuant to 12 U.S.C. 24(Eleventh) are referred to collectively as ''public welfare investments.'') The proposal sought to make burden-reducing changes that would make it easier for national banks to use the public welfare investment authority that the statute and regulation provide.

Specifically, we proposed simplifying the prior notice and self-certification requirements that apply to national banks' public welfare investments; expanding the types of investments a national bank may self-certify by removing geographic restrictions; and permitting an eligible community bank[1] to self-certify any public welfare investment. The proposal asked whether the OCC should modify the requirements for demonstrating community involvement in a national bank's public welfare investments, other ways in which we could simplify part 24 standards or streamline procedures, and about its impact on community banks.

Description of Comments Received and Final Rule

The OCC received 18 comments on the proposal. These comments included: 7 from banks, bank holding companies, and related entities; 8 from community reinvestment or other public interest organizations; and 3 from banking trade associations. The majority of the commenters supported the proposed changes. A summary of the comments and a description of the final rule follows.

Community Benefit Information Requirement (§ 24.3(c))

Currently, § 24.6 lists certain public welfare investments that an eligible bank may make by submitting a self-certification letter to the OCC within 10 working days after it makes the investment, provided the bank's aggregate public welfare investments do not exceed 5 percent of the bank's capital and surplus. No prior notification or approval is required. For all other public welfare investments, a national bank must submit an investment proposal to the OCC for prior approval. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the bank's investment proposal.

Regardless of which procedure applies, § 24.3(c) currently requires a national bank making a public welfare investment to demonstrate the extent to which the investment benefits communities otherwise served by the bank. (The requirement of § 24.3(c) is referred to herein as the community benefit information requirement.) Section 24.5 requires the bank to provide a statement in its self-certification letter or investment proposal certifying that it has complied with this requirement.

In the proposal, we proposed to remove the community benefit information requirement. Eight of the 11 commenters addressing this amendment supported this change on the grounds that it is unnecessary, not required by statute, and may constrict national banks from making otherwise qualifying public welfare investments. Two commenters objected to the change, noting that national banks should be required to submit a description of the project to the OCC. However, these commenters misconstrue the nature of the community benefit information requirement, which does not require a national bank to describe its proposal, but only to demonstrate the extent to which the investment benefits communities otherwise served by the bank. The investing national bank is, however, required to provide a description of the project under § 24.5(a) (if the bank is using the self-certification procedures) or § 24.5(b) (if the bank is seeking prior OCC approval).

In addition, one commenter stated that without the community benefit information requirement, a national bank could self-certify investments ''of a predatory nature'' that harm communities. However, all of the investments authorized pursuant to 12 U.S.C. 24(Eleventh) and part 24 must, by statute, promote the public welfare. In addition, § 24.3(d) imposes a requirement that the bank demonstrate non-bank community support for or participation in the proposed investment. A bank is unlikely to be able to satisfy these requirements if the target community opposes the investment. Therefore, we have concluded that the community benefit information requirement serves no independent purpose that contributes to our ability to ensure that an investment made pursuant to part 24 comports with 12 U.S.C. 24(Eleventh). Accordingly, the final rule removes the community benefit information requirement from part 24.

We also proposed changing § 24.5 to provide that a national bank that wants the OCC to consider a specific public welfare investment during a Community Reinvestment Act (CRA) examination may include a simple statement to that effect (a CRA statement) in its public welfare investment proposal or self-certification letter.[2] Although, as a matter of law, a bank's authority to make public welfare investments pursuant to 12 U.S.C. 24(Eleventh) and part 24 is independent of its obligation to serve the credit needs of its entire community under the CRA, we proposed this provision because we

[1] Part 24 defines an ''eligible bank'' as a national bank that is well capitalized, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (the CAMELS rating), has a Community Reinvestment Act rating of ''Outstanding'' or ''Satisfactory,'' and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e). The proposal defined an eligible community bank as an eligible bank with total assets of less than $250 million.

[2] The OCC's approval of a public welfare investment made pursuant to part 24 does not affect how the investment is evaluated for CRA purposes, and an investment approved under part 24 is not necessarily a qualified investment for purposes of CRA.

recognized that a bank may want the OCC to consider a public welfare investment for CRA purposes.

Several commenters requested that the OCC modify this provision to indicate that a bank may seek to have the investment qualify during a CRA examination even if it did not make this request in its investment proposal or self-certification letter. We agree with these commenters that the CRA statement is not, and should not be, a prerequisite for consideration of the investment during the CRA examination. Based on these comments, it appears that the CRA statement provision may cause needless confusion on this point. Therefore, we have removed the CRA statement from the final rule. However, a national bank still may choose to provide a CRA statement in its investment proposal or self-certification letter, and these statements will be treated as voluntary and not determinative of whether the OCC will consider the investment for purposes of CRA. A national bank continues to have an affirmative obligation to provide examiners with information about public welfare investments that it wishes to have considered during a CRA examination.

Demonstration of Community Support (§ 24.3(d))

Under § 24.3(d), a national bank may make investments pursuant to part 24 if it demonstrates that it has non-bank community support for, or participation in, the investment. Section 24.3(d) provides a nonexclusive list of ways that a national bank may demonstrate this support or participation.

The proposal invited comment on whether this approach is effective in encouraging community involvement in national banks' public welfare investments. In particular, the proposal sought comment on whether the current non-bank community support or participation requirement is appropriate and whether there are other ways of demonstrating support or participation.

A number of commenters thought that the current regulatory approach is adequate while other commenters suggested eliminating the requirement because it is not required by statute and may constrict a national bank's ability to make otherwise qualifying and beneficial public welfare investments. A few commenters also recommended specific methods for meeting the participation requirement that the OCC should add to the list provided in § 24.3(d). These included investments in projects that receive Federal low-income housing tax credits, letters of support, and representations by sponsors of national or regional funds that the investment will primarily benefit activities with community support or participation.

Based on the comments received, the final rule includes the receipt of Federal low-income housing tax credits by the project in which the investment is made (directly or through a fund that invests in such projects) as an additional method of demonstrating community support or participation for a public welfare investment. Under the United States Tax Code, for a project to qualify for the low-income housing tax credit, 20 percent or more of the residential units in the project must be both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, or 40 percent or more of the residential units in the project must be both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. 26 U.S.C. 42(g). Because Congress has deemed these projects worthy of special tax treatment due to their focus on low-income individuals and because the Federal low-income housing tax credit program imposes an application and review process implemented by State allocation agencies that requires public input and community support for the affordable housing project, we believe that these projects benefit, and are supported by, the communities in which they are located.

In addition, we have amended the introductory paragraph of this section to remove superfluous language.

Self-Certification of Public Welfare Investments by an Eligible Bank (§ 24.5(a))

The proposal changed § 24.5(a) to permit eligible community banks (national banks with less than $250 million in assets) to self-certify *all* public welfare investments, not only those investments listed in § 24.6 as eligible for self-certification. In the preamble to the proposal, we expressed the view that this change would reduce the regulatory burden and costs associated with the part 24 prior approval process for eligible community banks, which operate with more limited resources than larger institutions. This could encourage more community banks to make public welfare investments in local CDCs and CD projects that might not be able to attract investments from other sources. The proposal also noted that this change is consistent with 12 U.S.C. 24(Eleventh), which does not require a national bank to receive prior OCC approval before making a public welfare investment within the 5 percent of capital aggregate limit.

Although many of the commenters who addressed this issue supported the expansion of the self-certification process for community banks, a number of other commenters requested that we raise the asset size of an eligible community bank from $250 million to $500 million or $1 billion. Still other commenters supported expanding the availability of the self-certification process to all eligible national banks, regardless of asset size. These commenters stated that there is no statutory basis for distinguishing between small and large banks in the context of public welfare investments. One commenter specifically stated that because the nature of the investment should determine whether it qualifies for self-certification, there is no reason to have one set of criteria for eligible community banks, and another for eligible large banks. In addition, these commenters noted that many of the reasons that support expanding the self-certification process to community banks also apply to larger banks. Specifically, the commenters noted that: there is no statutory requirement for national banks of any asset size to receive prior OCC approval before making a public welfare investment within the 5 percent of capital aggregate limit; the investment must still meet the definition of public welfare investment set forth in the regulation; safety and soundness concerns are not raised because only ''eligible'' banks (banks with CAMELS ratings of 1 or 2, among other things) may utilize the self-certification process; a bank's public welfare investments are subject to review during the examination process; and, finally, if the OCC finds that an investment violates the law, is inconsistent with the safe and sound operation of the bank, or poses a risk to the deposit insurance fund, it may require the bank to take appropriate remedial action.

One commenter stated that the OCC should continue to require an application process as a means of ensuring that the investing bank provides a description of the proposed investment. However, as previously noted, a national bank must provide a description of its proposed investment regardless of whether it is using the part 24 self-certification or prior approval procedure. Therefore, requiring a full application and prior approval merely to detail a description of the project is unnecessary. *See* 12 CFR 24.5(a)(3)(iii).

Based on the comment letters received, we have reconsidered the approach to expanding the self-

certification process. We agree with those commenters who noted that there is no substantive reason to limit expanding the self-certification process to community banks. Expanding the self-certification process to any public welfare investments made by eligible national banks regardless of asset size would make the public welfare investment process less burdensome and costly for all national banks, community banks included. Community banks, and their customers and communities, would benefit from this change to the same extent as if we had adopted the rule as proposed. However, expanding the self-certification process to any public welfare investment made by any eligible bank also enables larger institutions to benefit from the savings in cost and time that the self-certification process provides. This, in turn, should encourage more national banks to make public welfare investments than if the expansion of the self-certification process were limited to community banks.

Therefore, the final rule amends §§ 24.5 and 24.6 to permit all eligible banks, regardless of asset size, to self-certify any public welfare investment. As a result, the self-certification process for eligible banks is not limited to those investments listed in § 24.6. Banks that do not meet the definition of ''eligible bank'' found in § 24.2(e), as well as banks with aggregate outstanding investments that exceed 5 percent of capital and surplus, as provided in § 24.4, must still submit an investment proposal to the OCC for prior approval. In addition, investments that involve properties carried on the bank's books as ''other real estate owned'' and investments that we determine in published guidance to be inappropriate for self-certification remain ineligible for self-certification, as currently provided in the regulation.

The final rule continues to list those investments currently specified in § 24.6 as eligible for self-certification, but recategorizes them as examples of qualifying public welfare investments. We believe that this nonexclusive list remains helpful to national banks in describing the types of investments they may make under part 24. Because of this change, we are also amending § 24.5 to include the language formerly in § 24.6(b), as amended.

The Local Community Investment Requirement for Self-Certification (§ 24.6(b)(2))

Currently, § 24.6(b)(2) does not permit a national bank to self-certify an investment if, among other things, more than 25 percent of the investment is used to fund projects that are located in a State or metropolitan area other than the States or metropolitan areas in which the bank maintains its main office or has branches. Under § 24.5(a)(3)(vii), if any portion of a bank's investment funds projects outside of its local areas, the bank must include in its self-certification letter a statement that no more than 25 percent of the investment funds these projects.

We proposed to remove this local community investment requirement to enable a national bank to use the less burdensome self-certification process to make eligible public welfare investments in any area. All of the commenters that discussed this issue supported this change. The commenters noted that this requirement is not mandated by statute and that the proposed change would permit national banks to use the self-certification process for investments in national community development investment vehicles, which often provide funds for projects located throughout the United States. Therefore, removing this requirement could facilitate an increase in the amount of capital available for local community and economic development projects throughout the country.

We therefore are adopting this change as proposed. As indicated above, we are also moving § 24.6(b) to § 24.5, for clarity and to combine similar provisions. However, for the same reasons discussed in connection with the proposal to remove the community benefit information requirement, we are not adopting the amendment that would have allowed a national bank the option of including a CRA statement in its self-certification letter.

Other Changes (§§ 24.1, 24.3, and 24.6(a) and (b))

We also requested comment on other ways in which we could simplify part 24 standards and procedures. The final rule contains the following additional changes to part 24.

First, one commenter suggested that the OCC remove the provision in § 24.3 that requires a bank to demonstrate that it is not reasonably practicable to obtain other private market financing for the proposed investment. The commenter noted that this requirement is ambiguous and often counterproductive in that it prevents the funding of worthwhile public welfare projects that may receive funding from other for-profit entities. We agree with this commenter and the final rule removes this requirement.

Second, a number of commenters requested that the OCC make changes to the list of investments eligible for self-certification in § 24.6. As discussed in the following two paragraphs, we have revised § 24.6 to reflect certain suggestions made by commenters. However, as noted previously, this list now provides illustrative examples of permissible public welfare investments rather than investments eligible for self-certification.

Specifically, § 24.6(a)(5) currently allows self-certification for investments in projects that qualify for Federal low-income housing tax credits provided the investment is made as a limited partner, or as a partner in an entity that itself is a limited partner, and the general partner of the project is, or is primarily owned and operated by, a 26 U.S.C. 501(c)(3) or (4) non-profit corporation. One commenter suggested that this provision should no longer require non-profit participation because the vast majority of low-income housing tax credit projects do not involve a non-profit entity. We agree that the requirement for non-profit participation is not necessary to further statutory and regulatory purposes. In addition, we believe that the requirement that the investment be made as a limited partner is unnecessary because § 24.4(b) prohibits a national bank from making an investment that would expose the bank to unlimited liability, thereby preventing a national bank from investing as a general partner. Therefore, the final rule removes both of these requirements as unnecessary and includes this provision in amended § 24.6 as another example of an investment permissible under Part 24.

A number of commenters also suggested that the OCC change § 24.6(a) to permit national banks to self-certify investments in community development financial institutions, as defined in 12 U.S.C. 4702(5). In general, these institutions have as a primary mission the promotion of community development in low-income communities and other areas of economic distress that lack adequate access to loans or equity investments. *See* 12 U.S.C. 4702(5). These entities also provide development services in conjunction with equity investments or loans, and maintain accountability to residents of their investment areas or target populations. *Id.* We agree with these commenters that investments in these types of entities qualify as eligible public welfare investments. Therefore, the final rule changes § 24.6(a) to include these types of investments as another example of an investment permissible under Part 24.

In addition, the final rule adds a new paragraph to § 24.1 to clarify that if a

national bank wants to make loans or investments designed to promote the public welfare and that are authorized under provisions of the banking laws other than 12 U.S.C. 24(Eleventh), it may do so without regard to the provisions of 12 U.S.C. 24(Eleventh) or part 24. For example, a bank that wishes to make mortgage loans to low- and moderate-income individuals or loans to CDCs may do so without complying with part 24 (or becoming subject to part 24's investment limitations), since the authority to make these loans is provided in 12 U.S.C. 371, and 12 U.S.C. 24(Seventh) and 12 U.S.C. 84, respectively.

The final rule also makes a conforming amendment to both §§ 24.5(a) and (b) to provide that the self-certification letter or investment proposal should contain a description of the investment activity described in § 24.3(a) that the investment ''primarily'' supports. The addition of the word ''primarily'' to this provision conforms these requirements to both 12 U.S.C. § 24(Eleventh), which provides that a national bank may make an investment designed primarily to promote the public welfare, and section 24.3(a), which provides that a national bank may make an investment that primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal governments.

Finally, the final rule makes a technical change to § 24.6(a)(8) to update a citation to Federal Reserve Board regulations.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The final rule reduces regulatory burden on national banks by simplifying the prior approval process and simplifying and expanding the self-certification process for part 24 investments.

Paperwork Reduction Act

For purposes of compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OCC invites comment on:

(1) Whether the collections of information contained in this final rule are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0194, Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: Paperwork Reduction Project 1557–0194, Washington, D.C. 20219.

The final rule is expected to reduce annual paperwork burden for recordkeepers because it eliminates certain application and self-certification requirements. The collection of information requirements in this final rule are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

Estimated average annual burden hours per recordkeeper: 1.9.

Start-up costs: None.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited to the prior notice and self-certification process for part 24 investments and contains no mandates within the meaning of the Unfunded Mandates Act. The OCC therefore has determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the OCC amends part 24 of Chapter I of Title 12 of the Code of Federal Regulations as set forth below:

PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

2. In § 24.1, a new paragraph (d) is added to read as follows:

§ 24.1 Authority, purpose, and OMB control number.

* * * * *

(d) National banks that make loans or investments that are designed primarily to promote the public welfare and that are authorized under provisions of the banking laws other than 12 U.S.C. 24(Eleventh), may do so without regard to the provisions of 12 U.S.C. 24(Eleventh) or this part.

3. In § 24.3:

A. Paragraphs (b) and (c) are removed;

B. Paragraph (d) is amended by removing the phrase ''but not limited to'' and is redesignated as paragraph (b); and

C. Newly designated paragraph (b)(6) is revised to read as follows:

§ 24.3 Public welfare investments.

* * * * *

(b) * * *

(6) Financing for the proposed investment from the public sector or community development organizations or the receipt of Federal low-income housing tax credits by the project in which the investment is made (directly or through a fund that invests in such projects).

§ 24.4 [Amended]

4. In § 24.4, paragraph (a) is amended by adding ''pursuant to § 24.5(b)'' after the phrase ''by written approval of the bank's proposed investment(s)''.

5. In § 24.5:

A. Paragraphs (a)(1) and (a)(3)(iii) are revised;

B. Paragraph (a)(3)(v) is amended by adding the word ''and'' at the end of the paragraph;

C. Paragraph (a)(3)(vi) is amended by removing the term ''; and'' and adding a period in its place at the end of the sentence;

D. Paragraph (a)(3)(vii) is removed;

E. A new paragraph (a)(5) is added; and

F. Paragraphs (b)(1) and (b)(2)(iii) are revised.

The revisions and addition read as follows:

§ 24.5 Public welfare investment self-certification and prior approval procedures.

(a) * * *

(1) Subject to § 24.4(a), an eligible bank may make an investment without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures prescribed in this section.

* * * * *

(3) * * *

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment primarily supports, and a brief description of the particular investment;

* * * * *

(5) Notwithstanding the provisions of this section, a bank may not self-certify an investment if:

(i) The investment involves properties carried on the bank's books as ''other real estate owned''; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for self-certification.

(b) * * *

(1) If a national bank does not meet the requirements for self-certification set forth in this part, the bank must submit a proposal for an investment to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) * * *

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment primarily supports, and a description of the particular investment;

* * * * *

6. In § 24.6:

A. The section heading and paragraph (a) introductory text are revised;

B. Paragraphs (a)(5) and (a)(8) are revised;

C. Paragraph (a)(9) is redesignated as paragraph (a)(10);

D. A new paragraph (a)(9) is added; and

E. Paragraph (b) is removed and reserved.

The revisions and addition read as follows:

§ 24.6 Examples of qualifying public welfare investments.

(a) Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3(a):

* * * * *

(5) Investments in a project that qualifies for the Federal low-income housing tax credit;

* * * * *

(8) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3;

(9) Investments in a community development financial institution, as defined in 12 U.S.C. 4702(5); and

* * * * *

Dated: December 10, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–32635 Filed 12–17–99; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1053]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The Board is required to adjust annually the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The present adjustment reflects changes for the twelve-month period ending in November 1999. During this period, the index increased by 2.1 percent; as a result, the threshold is increased to $30 million. Thus, depository institutions with assets of $30 million or less as of December 31, 1999, are exempt from data collection in 2000.

EFFECTIVE DATE: January 1, 2000. This rule applies to all data collection in 2000.

FOR FURTHER INFORMATION CONTACT: James H. Mann, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan statistical areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR Part 203) implements HMDA.

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.3(a)(1)(ii) provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board raised the threshold to $29 million for 1998 data collection, and kept it at that level for data collection in 1999.

During the period ending in November 1999, the CPIW increased by 2.1 percent. As a result, the new threshold is increased to $30 million. Thus, depository institutions with assets of $30 million or less as of December 31,

1999, are exempt from data collection in 2000. An institution's exemption from collecting data in 2000 does not affect its responsibility to report the data it was required to collect in 1999.

The Board is amending Comment 3(a)–2 of the staff commentary to implement the increase in the exemption threshold. Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). Regulation C establishes the formula for determining adjustments to the exemption threshold, if any, and the amendment to the staff commentary merely applies the formula. This amendment is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and would be contrary to the public interest. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Revisions

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. In Supplement I to Part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans,* paragraph 2 is revised to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2000, the asset-size exemption threshold is $30 million. Depository institutions with assets at or below $30 million are exempt from collecting data for 2000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 13, 1999.

Dated: December 13, 1999.

Dolores S. Smith,

Director, Division of Consumer and Community Affairs.

[FR Doc. 99–32827 Filed 12–17–99; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Small Business Reauthorization Act of 1997, enacted on December 2, 1997, that affect the Small Business Investment Company (SBIC) program, including provisions affecting SBICs' minimum capital requirements, leverage eligibility, and the timing of tax distributions by SBICs that have issued Participating Securities. Other provisions of the final rule modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, takedowns of leverage, and in-kind distributions by Participating Securities issuers. A proposed regulation that would have prohibited political contributions by SBICs is not being finalized at this time.

DATES: This rule is effective on December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: On April 14, 1999, SBA published a proposed rule (64 FR 18375) to implement the provisions of Subtitle B of Public Law 105–135 (December 2, 1997), the Small Business Reauthorization Act of 1997, which relate to SBICs. The proposed rule also included a provision prohibiting political contributions by SBICs and modifications of regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, procedures for drawing down leverage from SBA, and in-kind distributions by SBICs that have issued leverage in the form of Participating Securities.

SBA received two comments on the proposed rule during the 30-day comment period. This final rule includes changes based on some of the comments received, as explained in this preamble.

Private Capital

Proposed § 107.230(b)(3) is adopted as final. The provision implements a change in the statutory definition of private capital to include certain funds invested in a Licensee by a Federally chartered or Government-sponsored corporation established prior to October 1, 1987.

Definition of ''Associate''

The proposed technical correction in the definition of ''Associate'' in § 107.50 is adopted as final. The revised definition clarifies the applicability of paragraph (8)(i) of the definition to business concerns organized as partnerships or limited liability companies.

Leverageable Capital

The proposed change in the definition of Leverageable Capital in § 107.50 is adopted as final. The definition no longer excludes Qualified Non-private Funds (as defined in § 107.230(d)) whose source is Federal funds.

Internet Access and Electronic Mail

Proposed § 107.504 is adopted with one minor change. The proposed rule would have required all SBICs to have Internet access and Internet electronic mail no later than June 30, 1999. Because of the time elapsed since publication of the proposed rule, the final rule moves the effective date of this requirement to March 31, 2000.

Political Contributions

Proposed § 107.505, which would have prohibited contributions by SBICs to any political campaign, party, or candidate, or to any political action committee, is not being finalized at this time. SBA is continuing to study the issue of political contributions by SBICs.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses that fall significantly below the maximum size permitted for a Small Business. These businesses are referred to as ''Smaller Enterprises.'' The proposed rule included minor corrections and clarifications related to the financing of Smaller Enterprises that are adopted as proposed, and one substantive change that has been modified in the final rule.

Section 215(b) of Public Law 105–135 increased the maximum amount of SBA

leverage for which an SBIC could be eligible (see the section of this preamble entitled ''Maximum Amount of Leverage''). The statute further required that 100 percent of any ''financings made in whole or in part with leverage in excess of $90,000,000'' (the previous limit) be invested in Smaller Enterprises. SBA's interpretation of this requirement in proposed § 107.710(d) was that an SBIC must have 100 percent of any outstanding leverage over $90 million invested in Smaller Enterprises, while also satisfying the requirement in § 107.710(b) that 20 percent of its total investment activity be devoted to Smaller Enterprises.

One commenter pointed out that the proposed rule appeared to prevent any leverage over $90,000,000 from being invested in businesses that are not Smaller Enterprises, even if an SBIC had already made Smaller Enterprise investments in an amount far exceeding the basic 20 percent requirement in § 107.710(b). The commenter suggested that SBA look instead at the composition of an SBIC's portfolio in the aggregate.

SBA agrees that an aggregate test is appropriate and has modified the final rule so that an SBIC's required dollar amount of Smaller Enterprise investments is determined on that basis. The final rule also modifies the basic 20 percent investment requirement and the additional 100 percent requirement for leverage over $90,000,000 so that they do not overlap. In other words, it eliminates the possibility that an SBIC investing an additional dollar would be required to increase its Smaller Enterprise investments by $1.20.

In the final rule, § 107.710(b)(1) is revised to exclude financings made in whole or in part with leverage over $90,000,000 from the total dollar amount of financing activity that is subject to the 20 percent test. An SBIC that has issued leverage over $90 million then must determine its total required dollar amount of Smaller Enterprise financings under § 107.710(d). This amount is determined by adding the minimum amount necessary to satisfy paragraph (b)(1) to the total dollar amount of financings made in whole or in part with leverage over $90,000,000. The source of funding for individual investments in Smaller Enterprises does not matter; the SBIC is only required to provide sufficient financing to Smaller Enterprises in the aggregate.

In developing the final rule, SBA considered whether it would be excessively difficult for SBICs to identify financings made ''in whole or in part'' with leverage over $90,000,000. SBA believes that this would not be the case. Since SBA introduced a new interim leverage funding mechanism in May 1998, SBICs typically draw leverage as needed to fund specific investments. Thus, there should be a clear link between the takedown of leverage over $90,000,000 and the closing of a financing. SBA realizes that SBICs sometimes request leverage to provide themselves with ''working capital'' for general operating purposes. If an SBIC requests leverage over $90,000,000 for this purpose, but the effective use of the leverage is to free or replace other funds used to complete a financing, SBA will assume that the financing was made with the leverage proceeds.

Real Estate Refinancing

Proposed § 107.720(c)(2) is adopted as final. The provision allows an SBIC to provide financing to a Small Business that will use the proceeds to refinance debt obligations on property that it owns and occupies, provided the Small Business uses at least 67 percent of the usable square footage for an eligible business purpose.

Co-Investment With Associates

Proposed § 107.730(d)(3)(iv) is adopted as final. The provision concerns one set of circumstances under which an SBIC's co-investment with an Associate is presumed to be on terms that are equitable to the SBIC, so that no specific demonstration of fairness is required. As revised, the presumption applies only to an SBIC that intends to operate permanently as a non-leveraged company, rather than to any SBIC that is currently non-leveraged.

Portfolio Diversification Requirement (''Overline'' Limit)

Proposed § 107.740(a) is adopted as final. Under the revised provision, an SBIC's overline limit will be computed based on the sum of: (1) its Regulatory Capital at the time an investment or commitment is made; and (2) any distributions permitted under § 107.1570(b) that were made within the preceding 5 years and reduced Regulatory Capital. A distribution made within the preceding 5 years under § 107.585 may also be added back to Regulatory Capital for the purpose of the overline computation if it reduced Regulatory Capital by no more than 2 percent. A larger distribution under § 107.585 may be added back with the approval of SBA.

The final rule also clarifies that the overline limit applies to SBICs that do not have outstanding leverage, but which intend to issue leverage in the future.

Leverage Application Procedures and Eligibility

The proposed technical correction in § 107.1100(b) is adopted as final. The revision reflects recent changes in leverage funding procedures, under which a Licensee can issue leverage only by first obtaining a leverage commitment from SBA, and then drawing down funds against the commitment.

Proposed § 107.1120(d) contained a certification requirement for Licensees seeking leverage over $90,000,000. In the final rule, this requirement has been modified to be consistent with the changes made in § 107.710. These changes are discussed in the section of this preamble entitled ''Financing of Smaller Enterprises.''

Maximum Amount of Leverage

Proposed §§ 107.1150(a) and (b)(1) are adopted as final, with one modification. The leverage eligibility table in § 107.1150(a)(1) has been updated to reflect changes in the Consumer Price Index (CPI) through September 1999. In accordance with § 107.1150(a)(2), SBA will determine the next adjustment of the current leverage ceiling ($105,200,000) after the Bureau of Labor Statistics publishes the CPI for September 2000. SBA will publish the indexed maximum leverage amounts each year in a Notice in the **Federal Register**.

Draws Against SBA Leverage Commitments

Proposed §§ 107.1220 and 107.1230(d) are adopted as final. The procedural requirements in these sections have been updated to be consistent with the interim leverage funding mechanism, sometimes described as ''just-in-time'' funding, that SBA introduced in May 1998. The final rule makes four changes in these procedures that are discussed in greater detail in the preamble to the proposed rule. First, it eliminates the requirement that draw requests submitted within 30 days of the end of a Licensee's fiscal quarter be accompanied by updated quarterly financial statements. Second, it clarifies that every draw request must be accompanied by a statement certifying that there has been no material adverse change in the Licensee's financial condition since its last filing of SBA Form 468. Third, it requires a Licensee to provide preliminary unaudited year end financial statements when it submits a draw request more than 30 days

following the end of its fiscal year if the Licensee has not yet filed its audited annual financial statements. Fourth, it allows a Licensee to apply for a leverage draw based on operating liquidity needs, on specific financings it expects to close, or on a combination of the two.

Tax Distributions

Section 215(c) of Public Law 105–135 amended provisions of the Act governing the timing of ''tax distributions'' that SBICs with outstanding Participating Securities may make to their private investors and SBA. Previously, such distributions could be made once a year, based on the income allocated by a Licensee to its investors for Federal income tax purposes for the fiscal year immediately preceding the distribution. The statutory change now gives a Licensee the option of making a tax distribution at the end of any calendar quarter based on a quarterly estimate of tax liability. However, if the aggregate quarterly distributions made during any fiscal year exceed the amount that the Licensee would have been permitted to make based on a single computation performed for the entire year, future tax distributions must be reduced by the amount of the excess.

The statutory changes are implemented in §§ 107.1550 and 107.1575 and are finalized as proposed. The timing of tax distributions is addressed in §§ 107.1550(d) and 107.1575(a). The final rule permits interim tax distributions to be made on the last day of a calendar quarter or on any succeeding day through the first Payment Date following the end of the quarter (Payment Dates are February 1, May 1, August 1, and November 1 of each year). As before, Licensees may make annual tax distributions as late as the second Payment Date following the end of their fiscal year. If the distribution is not made on a Payment Date, SBA's prior approval is required.

Section 107.1550(e) implements the statutory provision concerning excess tax distributions. A detailed example of how the excess amount is computed appears in the preamble to the proposed rule.

Distributions on Other Than Payment Dates

Proposed § 107.1575 is adopted as final. The section incorporates a technical change to accommodate quarterly tax distributions by SBICs, as discussed in the section of this preamble entitled ''Tax Distributions.'' It also clarifies that while distributions on dates other than Payment Dates must normally be computed as of the distribution date, this requirement does not apply to ''annual'' distributions (*i.e.*, those computed as of the end of an SBIC's fiscal year end).

In-Kind Distributions

SBA proposed two substantive changes in § 107.1580, which governs in-kind distributions by SBICs that have issued Participating Securities. First, under proposed § 107.1580(a)(2), only ''Distributable Securities'' could be distributed in kind. This new term, which was defined in proposed § 107.50, would replace the term ''Publicly Traded and Marketable'' in § 107.1580. Although the two terms are technically different, SBA did not expect the change to have a major effect on Licensees' ability to distribute securities.

SBA received one comment on paragraph (3) of the definition, which requires that the quantity of securities distributed to SBA must be able to be sold ''over a reasonable period of time without having an adverse impact upon the price of the security.'' The commenter felt that because of the subjective nature of this provision, SBICs might find it difficult to determine whether a particular security will meet the requirement. SBA acknowledges that the requirement involves the application of judgment, but is finalizing paragraph (3) of the definition as proposed. The identical language appeared in the definition of ''Publicly Traded and Marketable,'' which has been in use with respect to in-kind distributions since the inception of the Participating Securities program. Based on its experience so far, SBA is satisfied that the requirement is workable and appropriate.

The second change involved proposed § 107.1580(a)(1), under which all in-kind distributions would have required SBA's prior approval. In SBA's view, this change represented a minor expansion of the current requirement in § 107.1570(a) that SBA approve all distributions made on dates other than one of the quarterly Payment Dates (February 1, May 1, August 1, and November 1). However, SBA received a comment, from a trade association representing a significant number of SBICs, expressing concern that ''SBA would substitute its judgment for that of the private experts managing SBICs as to when [an in-kind] distribution should take place or whether it might take place at all.''

SBA did not intend to create a fundamental change in the conditions under which in-kind distributions can be made. SBA proposed the rule change to ensure that it would have sufficient opportunity to ascertain whether a proposed distribution satisfies the regulatory definition of ''Distributable Securities.'' This type of review is an essential part of SBA's regulatory oversight responsibilities. Nevertheless, SBA does not wish to create a perception that it will readily overrule business decisions made by SBIC managers. Therefore, in the final rule, the requirement for prior approval of all in-kind distributions has been eliminated from § 107.1580. All distributions on dates other than Payment Dates, whether in cash or in kind, will continue to require prior approval under § 107.1575(b)(1).

To further clarify its role in reviewing in-kind distributions, SBA has also modified the introductory text of the definition of Distributable Securities. The final rule states that SBA determines whether securities qualify as Distributable Securities, but in so doing obtains the advice of a third party with expertise in the marketing of securities. This provision has a dual purpose. First, it emphasizes SBA's responsibility to ensure that a proposed distribution is consistent with regulatory requirements. Second, it formalizes SBA's current practice of seeking the advice of appropriate experts as it conducts its regulatory review. SBA is willing to commit itself to this procedure as a means of assuring the SBIC industry that it will not arbitrarily or capriciously reject proposed in-kind distributions.

The final rule also adopts a non-substantive change in § 107.1580(a)(4), which deals with SBA's use of agents to dispose of the securities it receives. This provision appeared in the proposed rule as § 107.1580(a)(5).

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866 since it will not have an annual effect on the economy of $100 million or more, and that it will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the final rule is to implement provisions of Public Law 105–135 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs. There are 352 SBICs, not all of which are small businesses. In addition, the changes will have little or no effect on

small businesses seeking funding from SBICs; rather they would only affect definitions for and activities of the SBICs.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule contains no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.50, revise paragraph (8)(i) of the definition of Associate, revise the definition of Leverageable Capital, and add, in alphabetical order, a new definition of Distributable Securities to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Associate of a Licensee means any of the following:

* * * * *

(8) * * *

(i) Any person described in paragraphs (1) through (6) of this definition is an officer, general partner, or managing member; or

* * * * *

Distributable Securities means equity securities that are determined by SBA (with the advice of a third party expert in the marketing of securities) to meet each of the following requirements:

(1) The securities (which may include securities that are salable pursuant to the provisions of Rule 144 (17 CFR 230.144) under the Securities Act of 1933, as amended) are salable immediately without restriction under Federal and state securities laws;

(2) The securities are of a class:

(i) Which is listed and registered on a national securities exchange, or

(ii) For which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation System and as to which transaction reports and last sale data are disseminated pursuant to Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Securities Exchange Act of 1934, as amended; and

(3) The quantity of such securities to be distributed to SBA can be sold over a reasonable period of time without having an adverse impact upon the price of the security.

* * * * *

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

* * * * *

3. In § 107.230, revise paragraph (b)(3) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(b) *Exclusions from Private Capital.*

* * *

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and

(iii) ''Qualified Non-private Funds'' as defined in paragraph (d) of this section.

* * * * *

4. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them to SBA. In addition, by March 31, 2000, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

5. Remove § 107.508.

§ 107.508 [Removed]

6. In § 107.710, revise paragraphs (b)(1), (c)(1)(i), and (c)(1)(ii), redesignate paragraphs (d) and (e) as paragraphs (e) and (f), revise the last sentence of redesignated paragraph (f), and add a new paragraph (d) to read as follows:

§ 107.710 Requirement to Finance Smaller Enterprises.

* * * * *

(b) * * *

(1) *General rule.* At the close of each of your fiscal years, for all Financings you extended since April 25, 1994, excluding Financings made in whole or in part with Leverage in excess of $90,000,000, at least 20 percent (in total dollars) must have been invested in Smaller Enterprises. If you were licensed after April 25, 1994, the 20 percent requirement applies to the Financings you extended since you were licensed, excluding Financings made in whole or in part with Leverage in excess of $90,000,000, plus any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital. For purposes of this paragraph (b)(1), Leverage in excess of $90,000,000 includes aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control. See also paragraph (d) of this section.

* * * * *

(c) * * *

(1) * * *

(i) Less than $10,000,000 if such Leverage included Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures only.

* * * * *

(d) *Special requirement for Leverage over $90,000,000.* If you have issued Leverage over $90,000,000 (including aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control), at the end of each of your fiscal years the cumulative Financings you extended to Smaller Enterprises must equal at least:

(1) The dollar amount necessary to satisfy paragraph (b) of this section; plus

(2) 100 percent of the amount of all Financings made in whole or in part with Leverage over $90,000,000.

* * * * *

(f) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120(c) through (e)).

7. In § 107.720, revise paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(c) * * *

(2) You are not permitted to finance a business, regardless of SIC

classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

* * * * *

8. In § 107.730, revise paragraph (d)(3)(iv) to read as follows:

§ 107.730 Financing which constitute conflicts of interest.

* * * * *

(d) * * *

(3) * * *

(iv) You have no outstanding Leverage and do not intend to issue Leverage in the future, and your Associate either is not a Licensee or has no outstanding Leverage and does not intend to issue Leverage in the future.

* * * * *

9. In § 107.740, revise paragraph (a) to read as follows:

§ 107.740 Portfolio diversification (''overline'' limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future.

Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) For a Section 301(c) Licensee, 20 percent of the sum of:

(i) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(ii) Any Distribution(s) you made under § 107.1570(b), during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital; plus

(iii) Any Distribution(s) you made under § 107.585, during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than two percent or which SBA approves for inclusion in the sum determined in this paragraph (a)(1).

(2) For a Section 301(d) Licensee, 30 percent of a sum determined in the manner set forth in paragraph (a)(1)(i) through (iii) of this section.

* * * * *

10. In § 107.1100, revise the section heading and paragraph (b) to read as follows:

§ 107.1100 Types of Leverage and application procedures.

* * * * *

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 107.1200 through 107.1240.

* * * * *

11. In § 107.1120, redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and add a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) Certify, if applicable, that you will satisfy the requirement in § 107.710(d) to provide Financing to Smaller Enterprises.

* * * * *

12. In § 107.1150, revise paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

(a) *Maximum amount of Leverage.* (1) *Amounts before indexing.* If you are a Section 301(c) Licensee, the following table shows the maximum amount of Leverage you may have outstanding at any time, subject to the indexing adjustment set forth in paragraph (a)(2) of this section:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over $17,500,000.	300 percent of Leverageable Capital
(2) Over $17,500,000 but not over $35,100,000.	$52,500,000 + [2 x (Leverageable Capital − $17,500,000)]
(3) Over $35,100,000 but not over $52,600,000.	$87,700,000 + (Leverageable Capital − $35,100,000)
(4) Over $52,600,000	$105,200,000

(2) *Indexing of maximum amount of Leverage.* SBA will adjust the amounts in paragraph (a) of this section annually to reflect increases through September in the Consumer Price Index published by the Bureau of Labor Statistics. SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

(b) *Exceptions to maximum Leverage provisions.* (1) *Licensees under Common Control.* Two or more Licensees under Common Control may have aggregate outstanding Leverage over $105,200,000 (subject to indexing as set forth in paragraph (a)(2) of this section) only if SBA gives them permission to do so.

* * *

* * * * *

13. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 30 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

14. In § 107.1230, revise paragraph (d)(1), redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), add a new paragraph (d)(2), and revise the first sentence of redesignated paragraph (d)(4) to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

* * * * *

(d) * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

* * * * *

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. * * *

* * * * *

15. In § 107.1550, revise the first sentence of the introductory text, paragraph (b)(1), and paragraph (d), and add a new paragraph (e) to read as follows:

§ 107.1550 Distributions by Licensee—permitted ''tax Distributions'' to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you

are a limited partnership, ''S Corporation,'' or equivalent pass-through entity for tax purposes, you may make ''tax Distributions'' to your investors in accordance with this § 107.1550, whether or not they have an actual tax liability. * * *

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) You may compute your Maximum Tax Liability for a full fiscal year or for any calendar quarter. Use the following formula:

M = (TOI × HRO) + (TCG × HRC)

where:

M = Maximum Tax Liability

TOI = Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRO = The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

TCG = Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRC = The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

* * * * *

(d) *Paying a tax Distribution.* You may make an annual tax Distribution on the first or second Payment Date following the end of your fiscal year. You may make a quarterly tax Distribution on the first Payment Date following the end of the calendar quarter for which the Distribution is being made. See also § 107.1575(a).

(e) *Excess tax Distributions.* (1) As of the end of your fiscal year, you must determine whether you made any excess tax Distributions for the year in accordance with paragraph (e)(2) of this section. Any tax Distributions that you make for a subsequent period must be reduced by the excess amount distributed.

(2) Determine your excess tax Distributions by adding together all your quarterly tax Distributions for the year (ignoring any required reductions for excess tax Distributions made in prior years), and subtracting the maximum tax Distribution that you would have been permitted to make based upon a single computation performed for the entire fiscal year. The result, if greater than zero, is your excess tax Distribution for the year.

16. In § 107.1575, revise paragraphs (a)(1) and (b)(2) and add a new paragraph (a)(4) to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) * * *

(1) Required annual Distributions under § 107.1540(a)(1), annual Distributions under § 107.1550, and any Distributions under § 107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

* * * * *

(4) Quarterly Distributions under § 107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment Date following the end of such calendar quarter.

(b) * * *

* * * * *

(2) The ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570, must be:

(i) The distribution date, or

(ii) If your Distribution includes annual Distributions under §§ 107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;

* * * * *

17. In § 107.1580, revise the heading for paragraph (a) introductory text, and revise paragraphs (a)(1), (a)(4), and (b)(2) to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* * * *

(1) You may distribute only Distributable Securities.

* * * * *

(4) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

(b) * * *

(2) You must obtain SBA's prior written approval of any In-Kind Distribution of Earmarked Assets that are not Distributable Securities, specifically including approval of the valuation of the assets.

Dated: December 10, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–32689 Filed 12–17–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–189–AD; Amendment 39–11466; AD 99–26–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, and –200C series airplanes, that currently requires periodic inspections to detect missing nuts and/or damaged secondary support hardware adjacent to the aft engine mount, and replacement, if necessary. That AD also provides for optional terminating action for certain inspections and a torque check. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by the FAA's determination that the repetitive inspections required by the existing AD may not be providing the degree of safety assurance necessary for the transport airplane fleet. The actions specified by this AD are intended to prevent failure of the secondary support to sustain engine loads in the event of failure of the aft engine mount cone bolt, which could result in the separation of the engine from the wing.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

The incorporation by reference of Boeing Service Bulletin 737–71–1289, dated August 19, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 18, 1994 (59 FR 18294, April 18, 1994).

ADDRESSES: The service information referenced in this AD may be obtained

from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–09–14 R1, amendment 39–8876 (59 FR 18294, April 18, 1994), which is applicable to all Boeing Model 737–100, –200, and –200C series airplanes, was published in the **Federal Register** on October 2, 1998 (63 FR 52992). The action proposed to continue to require periodic inspections to detect missing nuts and/or damaged secondary support hardware adjacent to the aft engine mount, and replacement, if necessary. The action also proposed to mandate accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Two commenters support the proposed rule.

Requests to Revise Compliance Time of Paragraph (c) of the Proposed AD

Two commenters request that the compliance time in paragraph (c) of the proposed AD be revised by removing the threshold ''at next engine removal'' and setting the threshold simply to ''within 8,000 flight hours after the effective date of this AD.'' One commenter states that the requirement to accomplish the terminating action (*i.e.*, installation of Boeing Secondary Support, Kit Number 65C37057–1) is overly restrictive. Operators would have to be prepared to modify the secondary support (*i.e.*, install the secondary support kit) at any unscheduled engine change, even though the conditions that lead to an unscheduled engine removal are not likely to affect safety of the secondary support. Another commenter states that the threshold of ''at next engine removal'' in paragraph (c) of the proposed rule is too harsh. The commenter states that it accomplishes a magnetic particle inspection of the aft engine mount cone bolt during each engine removal, and that these inspections are more than adequate to ensure the integrity of the aft mount cone bolt until the modification is accomplished at 8,000 flight hours.

The FAA partially concurs with the commenters' request to revise the compliance time specified in paragraph (c) of the AD. The FAA's intent was to require installation at the next ''scheduled'' engine removal, or within 8,000 flight hours after the the effective date of this AD, whichever occurs first, which is the typical interval between scheduled engine changes/overhauls. The FAA agrees that the threshold should not be subject to ''unscheduled'' engine removals, but does not agree that the threshold should be set solely to ''within 8,000 flight hours,'' as suggested by the commenters. The FAA has determined that a compliance time at the next ''scheduled'' engine removal, or within 8,000 flight hours after the effective date of the AD, whichever occurs first, will provide operators adequate time to procure and install the secondary support kit, and will not be an unnecessary burden on operators.

In addition, the FAA does not agree with the second commenter that a magnetic particle inspection of the cone bolt during the engine removal will ensure that cracks will not initiate prior to the next engine removal. The magnetic inspection only ensures that the bolts being installed have no detectable cracks. In light of the results of testing conducted by Boeing and the two occurrences of failure of the aft engine mount cone bolts after the bolts had been subjected to ultrasonic inspections, the FAA finds that installation of a new, improved secondary support at the next scheduled engine removal, or within 8,000 flight hours after the effective date of this AD, whichever occurs first, is necessary to address the identified unsafe condition.

Therefore, the FAA has revised the compliance time of paragraph (c) of the final rule accordingly.

One commenter requests that the compliance time in paragraph (c) of the proposed AD coincide with its hush kit installation schedule. The commenter states that its hush kit schedule will occur prior to the proposed 8,000-flight hour threshold, but may not occur prior to the next engine removal. The commenter also states that aligning the compliance time with the hush kit installation will avoid the dual cost of installing the Boeing secondary support kit at the next engine removal at a cost of $10,600 per aircraft, and replacing it within one year as part of the NORDAM hush kit installation.

The FAA partially concurs with the commenter's request to revise the subject compliance time. The FAA finds that a threshold of ''at the next engine removal'' may result in the unnecessary installation and removal of the Boeing secondary support kit for those operators currently working to a schedule for incorporation of the NORDAM hush kit. However, the FAA finds that a compliance time of at the next ''scheduled'' engine removal, or within 8,000 flight hours after the effective date of the AD, whichever occurs first, will preclude any unnecessary installation and removal of the Boeing secondary support kit. The FAA based its determination on an expectation that operators will not schedule an engine change/overhaul within 12 months prior to installing a hush kit, but rather will schedule both to coincide in order to minimize down time. As discussed previously, the FAA has revised the threshold of paragraph (c) to at the next ''scheduled'' engine removal.

Requests to Allow an Alternative Method of Compliance (AMOC)

Two commenters request that paragraph (c) of the proposed AD be revised to include a statement that installation of certain NORDAM hush kits is an AMOC to the requirement to install the Boeing secondary support, Kit Number 65C37057–1. The commenters state that they are currently installing a certain NORDAM hush kit, and that this hush kit has been approved by the Seattle Aircraft Certification Office (SACO), FAA, Transport Airplane Directorate, as an AMOC to AD 91–09–14 R1. Specifically, the installation of NORDAM Low Gross Weight (LGW) Hush Kit [i.e., Supplementary Type Certificate (STC) ST00131SE] has been approved by the FAA as terminating action for the inspections mandated by AD 91–09–14 R1, with the exception of the repetitive inspections of the aft cone bolt failure indicator required in paragraph (a)(1) of AD 91–09–14 R1. The commenters state that this approval indicates that the secondary support that is installed as part of the NORDAM hush kit should provide an acceptable level of safety and meet the intent of the proposed rule.

The FAA concurs with the commenters' request to include a statement in paragraph (c) of the final rule to clarify this point. The FAA has revised the final rule to include a new

NOTE to specify that installation of certain NORDAM hush kits is considered an acceptable AMOC to the requirements of this AD, and is considered terminating action for the inspections mandated by this AD, except for the repetitive inspections of the aft cone bolt failure indicator required in paragraph (a)(1) of this AD. The repetitive inspections of the aft cone bolt failure indicator specified in paragraph (a)(1) are still required. In addition, the FAA finds that paragraph (d)(2) of the final rule also must be revised to clarify this point.

Requests to Not Mandate Replacement of Secondary Support

One commenter requests that the FAA continue to require the current inspections required by AD 91–09–14 R1 and continue to provide the optional terminating action (i.e., replacement of the secondary support of the aft engine mount with a new, improved secondary support) rather than mandating it. Another commenter questions the necessity of the proposed rule based upon existing mandates that will provide an equivalent means of compliance with a similar time period. One commenter states that it has been inspecting the aft mount cone bolt indicator for alignment during every over-night check in accordance with its maintenance policy and has been inspecting the secondary support hardware (i.e., the aft mount cone bolt and nut) in accordance with AD 91–09–14 R1. The commenter also states that it has been replacing the forward and aft mount cone bolt, nut, and vibration isolator every 6,000 flight hours or engine hard time, or at any engine removal, whichever occurs first. The commenter notes that it has not detected a failure of the secondary support hardware in the aft mount cone bolt, or detected loosening of the nut.

The FAA does not concur with the commenter's request to not mandate accomplishment of the previously optional terminating action. As discussed in the preamble of the proposed rule, the FAA has determined that the repetitive inspections required by the existing AD may not be providing the degree of safety assurance necessary for the transport airplane fleet. The 45-day inspection interval of the aft cone bolt failure indicator, as specified in the existing AD, may not detect a broken aft cone bolt in a timely manner, as cracks in the aft cone bolt may go undetected using the current ultrasonic inspection procedures. Worn secondary support components that exceed the wear limits allowed in the AD 91–09–14 R1 may not be reliably detected due to human factors and may, in the event of the failure of an aft cone bolt, render the secondary support incapable of supporting the aft end of the engine until the next inspection of the aft cone bolt failure indicator. Therefore, the FAA has determined that the repetitive inspections may not be adequate to preclude an engine separation, and finds that installation of the new Boeing secondary support kit should be mandated.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,045 Model 737–100, –200, and –200C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 382 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 91–09–14 R1 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $68,760, or $180 per airplane, per inspection cycle.

The replacement that is required by this AD will take approximately 60 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,000 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $4,049,200, or $10,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8876 (59 FR 18294, April 18, 1994), and by adding a new airworthiness directive (AD), amendment 39–11466, to read as follows:

99–26–07 Boeing: Amendment 39–11466. Docket 98–NM–189–AD. Supersedes AD 91–09–14 R1, Amendment 39–8876.

Applicability: All Model 737–100, –200, and –200C airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the secondary support to sustain engine loads in the event of failure of the aft engine mount cone bolt, which could result in the separation of the engine from the wing, accomplish the following:

Restatement of Requirements of AD 91–09–14, Amendment 39–6972

Repetitive Inspections and Replacement, If Necessary

(a) Within the next 45 landings after May 20, 1991 (the effective date of AD 91–09–14, amendment 39–6972), accomplish the following:

(1) Inspect the aft mount cone bolt indicator for proper alignment. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced, prior to further flight, with bolts that have been inspected in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, using magnetic particle inspection techniques. Repeat the inspection of the indicator at intervals thereafter not to exceed 45 landings.

(2) Unless previously accomplished within the last 255 landings, inspect the aft mount cone bolt improved secondary support for missing nuts, evidence of bolt wear, and disbonded honeycomb core; in accordance with Boeing Service Bulletin 737–71–1250, dated June 14, 1990. Except as provided in paragraph (b) of this AD, missing nuts, bolts worn outside the limits specified in the service bulletin, or disbonded honeycomb core must be replaced, prior to further flight, with new or repaired identical parts. Repeat the inspection at intervals not to exceed 300 landings.

Follow-On Inspections, Replacement, and Torque Check

(b) Perform the following inspections if discrepant hardware is found during the inspections required by paragraph (a)(2) of this AD, and replacement hardware is not immediately available:

(1) Prior to further flight, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the service bulletin, using magnetic particle inspection techniques. Replacement (newly installed) cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

(2) At the next ultrasonic inspection, as required by paragraph (b)(1) of this AD, unless previously accomplished within 150 to 300 landings after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt. After each cone bolt installation, accomplish the torque check procedure required by this paragraph between 150 landings and 300 landings following installation. Replacement of discrepant hardware in accordance with paragraph (a)(2) of this AD constitutes terminating action for the requirements of this paragraph.

(i) If the cone bolt torque is below one-half the specified torque, prior to further flight, remove the cone bolt and replace it with a serviceable bolt.

(ii) If the cone bolt torque is equal to, or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 150 to 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

New Actions Required by This AD

Replacement

(c) At the next scheduled engine removal, or within 8,000 flight hours after the effective date of this AD, whichever occurs first, replace the secondary support of the aft engine mount with a new, improved secondary support, Kit Number 65C37057–1; in accordance with Boeing Service Bulletin 737–71–1289, dated August 19, 1993; as revised by Notices of Status Change 737–71–1289 NSC 1, dated September 2, 1993, 737–71–1289 NSC 2, dated January 26, 1995, and 737–71–1289 NSC 03, dated October 3, 1996. Accomplishment of such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (a)(2) and (b)(1) of this AD, and for the torque check requirement of paragraph (b)(2) of this AD.

Optional Installation

(d) Installation of Nordam hush kits modified in accordance with the following Supplemental Type Certificate is considered acceptable for compliance with the requirements of paragraphs (a)(2), (b), and (c) of this AD, but are not considered acceptable for compliance with the requirements of paragraph (a)(1) of this AD.

- SA5730NM, issued on June 26, 1992 and amended on October 2, 1992; or
- ST00131SE, issued on November 8, 1994, and amended on January 26, 1995, May 13, 1996, September 13, 1996, and February 20, 1997.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–09–14 R1, amendment 39–8876, are approved as alternative methods of compliance with the requirements of this AD, except for the requirements of paragraph (a)(1) of this AD.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The inspection required by paragraph (a)(2) of this AD shall be done in accordance with Boeing Service Bulletin 737–71–1250, dated June 14, 1990. The inspection required by paragraph (b)(1) of this AD shall be done in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987. The replacement required by paragraph (c) of this AD shall be done in accordance with Boeing Service Bulletin 737–71–1289, dated August 19, 1993, as revised by Notice of Status Change 737–71–1289 NSC 1, dated September 2, 1993, Notice of Status Change 737–71–1289 NSC 2, dated January 26, 1995, and Notice of Status Change 737–71–1289 NSC 03, dated October 3, 1996.

(1) The incorporation by reference of Boeing Service Bulletin 737–71–1250, dated June 14, 1990; Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, Boeing Service Bulletin Notice of Status Change 737–71–1289 NSC 1, dated September 2, 1993, Boeing Service Bulletin Notice of Status Change 737–71–1289 NSC 2, dated January 26, 1995, and Boeing Service Bulletin Notice of Status Change 737–71–1289 NSC 03, dated October 3, 1996; is approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 737–71–1289, dated August 19, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 18, 1994 (59 FR 18294, April 18, 1994).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32509 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–262–AD; Amendment 39–11463; AD 99–26–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. This amendment is prompted by an incident of no power to the aft galleys and two incidents of sparking sounds coming from the G3 galley due to damage of the No. 3 and 4 wire assembly terminal lugs and overheating of the power feeder cables on the G3 GLCU. The actions specified in this AD are intended to prevent such damage due to the accumulated effects over time from overheating of the power feeder cables on the G3 GLCU, which could result in smoke and fire in the G3 galley.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of one occurrence of no power to the aft galleys and two occurrences of sparking sounds coming from the G3 galley. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes equipped with a certain 120 kilo volts alternating current (KVA) galley option. The No. 3 and 4 wire assembly of the galley load control unit (GLCU) had 2 terminal lugs discolored and one terminal strip with overheated power feeder cables and studs on the fuseholder. The damage was attributed to the accumulative effects over time from overheating due to galley current loads on wires improperly sized for the application. This condition, if not corrected, could result in damage to the wire assembly terminal lugs and power feeder cable of the G3 GLCU, which could result in smoke and fire in the G3 galley.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999, which describes procedures for repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center; and corrective actions, if necessary. The corrective actions include replacement of power feeder cables, fuseholder, and/or fuses, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999, which describes the same procedures as Revision 01 of the service bulletin. However, the inspection is only accomplished once, rather than repetitively. Therefore, this service bulletin is also provided as a source of accomplishment instructions for the required general visual inspections and corrective actions.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent damage to the wire assembly terminal lugs and power feeder cables due to the accumulated effects over time from overheating of the power feeder cables on the G3 GLCU. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted

in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–262–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–03 McDonnell Douglas: Amendment 39–11463. Docket 99–NM–262–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wire assembly terminal lugs and power feeder cables due to the accumulated effects over time from overheating of the power feeder cable on the G3 galley load control unit (GLCU), which could result in smoke and fire in the G3 galley, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center to detect damage (i.e., discoloration of affected parts or loose attachments) in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no damage is detected during any inspection required by this AD, repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

(2) If any damage is detected during any inspection required by this AD, prior to further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–0). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 2000.

Issued in Renton, Washington, on December 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32192 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–165–AD; Amendment 39–11470; AD 99–26–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–7 series airplanes, that requires a one-time visual inspection to detect corrosion on the upper half of the lower longerons on the inboard nacelles; and corrective actions, if necessary. This AD also requires modification of the upper and lower longeron halves. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion in the upper halves of the left and right hand lower longerons on the inboard nacelles, which could result in a landing gear failure.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7 series airplanes was published in the **Federal Register** on October 14, 1999 (64 FR 55640). That action proposed to require a one-time visual inspection to detect corrosion on the upper half of the lower longerons on the inboard nacelles; and corrective actions, if necessary. That action also proposed to require modification of the upper and lower longeron halves.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD.

It will take approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $15,360, or $480 per airplane.

It will take approximately 12 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $23,040, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–11 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11470. Docket 99–NM–165–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 004 through 113 inclusive, except serial numbers 037 and 061, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion in the upper halves of the left and right hand lower longerons on the inboard nacelles, which could result in a landing gear failure, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a visual inspection to detect corrosion on the upper half of the lower longerons on the inboard nacelles in accordance with Bombardier Service Bulletin S.B. 7–54–19, Revision 'C,' dated April 16, 1999.

Modification

(b) If no corrosion is detected, prior to further flight, modify the upper and lower longeron halves in accordance with Bombardier Service Bulletin S.B. 7–54–19, Revision 'C,' dated April 16, 1999.

Corrective Action

(c) If any corrosion is detected, prior to further flight, accomplish the actions specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with Bombardier Service Bulletin S.B. 7–54–19, Revision 'C,' dated April 16, 1999.

(1) For corrosion that is within the limits specified in the service bulletin: Accomplish the corrective actions specified in the service bulletin, and perform a fluorescent penetrant inspection or high frequency eddy current inspection to detect cracks in areas where corrosion was blended out. The corrective actions and inspections shall be done in accordance with the service bulletin.

(i) If no crack is detected, prior to further flight, modify the upper and lower longeron halves in accordance with the service bulletin.

(ii) If any crack is detected, prior to further flight, accomplish the actions required by paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(B) of this AD.

(A) Either replace the longeron with a new longeron in accordance with the service bulletin, or repair in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or Transport Canada Civil Aviation (or it's delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(B) Modify the upper and lower longeron halves in accordance with the service bulletin.

(2) For corrosion that exceeds the limits specified in the service bulletin: Accomplish the actions required in paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(B) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except at provided by paragraph (c)(1)(ii)(A) of this AD, the actions shall be done in accordance with Bombardier Service Bulletin S.B. 7–54–19, Revision 'C,' dated April 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–99–07, dated March 15, 1999.

(g) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32582 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–195–AD; Amendment 39–11471; AD 99–26–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322 Series Airplanes, and Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330–301, –321, and –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 series airplanes, that requires repetitive replacements of the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent hydraulic leakage from the yaw damper actuator installed on active position due to premature wear of the dynamic seals between the actuator piston and the piston bearing. Hydraulic leakage could lead to complete loss of the green hydraulic circuit, which could result in reduced controllability of the airplane.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330–301, –321, and –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 series airplanes was published in the **Federal Register** on October 8, 1999 (64 FR 54797). That action proposed to require repetitive replacements of the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

Currently, there are no Airbus Model A330–301, –321, –322 series airplanes, or Model A340–211, –212, –213, –311, –312, and –313 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 2 work hours to accomplish the required replacement, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts are not attributable to this AD. Based on these figures, the cost impact of this AD will be $120 per airplane, per replacement cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–12 Airbus Industrie: Amendment 39–11471. Docket 99–NM–195–AD.

Applicability: All Model A330–301, –321, and –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic leakage from the yaw damper actuator which could lead to complete loss of the green hydraulic circuit, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Replacement

(a) Prior to the accumulation of 6,500 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later, replace the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator in accordance with Airbus Service Bulletin A330–27–3055, Revision 01, dated July 1, 1998 (for Model A330 series airplanes); or A340–27–4063, Revision 01, dated July 1, 1998 (for Model A340 series airplanes); as applicable. Thereafter, repeat the replacement at intervals not to exceed 6,500 flight hours.

Note 2: Replacement of yaw dampers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–27–3055, dated August 26, 1997 (for Model A330 series airplanes), or Airbus Service Bulletin A340–27–4063, dated August 26, 1997 (for Model A340 series airplanes); as applicable; is an acceptable method of compliance for the initial replacement required by paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Airbus Service Bulletin A330–27–3055, Revision 01, dated July 1, 1998; or Airbus Service Bulletin A340–27–4063, Revision 01, dated July 1, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 1998–100–067(B) R2, dated May 19, 1999, and 98–104–083(B), dated February 25, 1998.

(e) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32583 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–186–AD; Amendment 39–11468; AD 99–26–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires repetitive inspections to ensure the proper condition of the engine thrust link components, and follow-on corrective action, if necessary; and replacement of the end cap assembly with an improved assembly. Such replacement, when accomplished, terminates the repetitive inspections. This amendment is prompted by a report of fatigue cracking of end cap bolts caused by improper installation. The actions specified by this AD are intended to prevent failure of the end cap assembly, which could lead to separation of the engine from the airplane in the event of a primary thrust linkage failure.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 21, 1999 (64 FR 56709). That action proposed to require repetitive inspections to ensure the proper condition of the engine thrust link components, and follow-on corrective action, if necessary; and replacement of the end cap assembly with an improved assembly. Such replacement, when accomplished, terminates the repetitive inspections. That action also revises the proposed rule by adding a repair requirement and by clarifying the type of inspection and terminology used in describing the parts to be inspected.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association of America (ATA), on behalf of its members, supports the proposed rule. The ATA states that responding members indicated that they had no comment or no objection to the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 239 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 96 airplanes of U.S. registry will be affected by this AD, that it will take approximately 37 work hours per airplane (18.5 work hours per engine) to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $213,120, or $2,220 per airplane, per inspection cycle.

It will take approximately 135 work hours per airplane (67.5 work hours per engine) to accomplish the required replacement of the forward engine mount end cap and bolts, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $873,600, or $9,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–09 Boeing: Amendment 39–11468. Docket 97–NM–186–AD.

Applicability: Model 767 series airplanes, powered by Pratt & Whitney Model JT9D or Model PW4000 series engines, as listed in Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible separation of the engine from the airplane in the event of a primary thrust linkage failure, accomplish the following:

Initial and Repetitive Inspections

(a) For Groups 1 and 2 airplanes: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

(1) Within 500 flight hours or 300 flight cycles after the effective date of this AD, whichever occurs later: Accomplish Work Package 1 (a detailed visual inspection of the forward engine mount to ensure that the thrust link, evener bar, associated lugs, and attaching hardware are firmly attached). Thereafter, repeat Work Package 1 at the intervals specified in the alert service bulletin until the requirements of either paragraph (a)(2) or (a)(3) of this AD are accomplished.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(2) Prior to the accumulation of 16,000 total flight cycles on any engine or within 500 flight hours or 300 flight cycles after the effective date of this AD, whichever occurs later: Accomplish Work Package 2 (non-destructive test inspection of the forward engine mount to ensure the proper condition of the engine thrust link components). Thereafter, repeat Work Package 2 on that engine at the intervals specified in the alert service bulletin until the requirements of paragraph (a)(3) of this AD are accomplished. Accomplishment of Work Package 2 constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD for that engine.

Replacement and Terminating Action

(3) Within 3 years after the effective date of this AD: Accomplish Work Package 3 (end cap and bolt replacement of the forward engine mount). Accomplishment of Work Package 3 constitutes terminating action for the requirements of this AD for Groups 1 and 2 airplanes.

(b) For Group 3 airplanes: Within 3 years after the effective date of this AD, accomplish Work Package 4 (bolt replacement) in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

Repair and Replacement Action

(c) For all airplanes: If any discrepancy (including an improperly installed or damaged engine thrust link component) is found during any inspection required by this AD, prior to further flight, accomplish the actions required by paragraphs (c)(1) and (c)(2) of this AD.

(1) Repair any discrepancies in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) Accomplish Work Package 3 in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

Spares

(d) As of the effective date of this AD, no person shall install a forward engine mount end cap having part number 310T3026–1 on any airplane.

Alternative Method of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32507 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–114–AD; Amendment 39–11462; AD 99–26–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 767 Series Airplanes Powered by Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and 767 series airplanes, that requires replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components. This amendment is prompted by reports of partial deployment of deactivated thrust reversers during landing. The actions specified by this AD are intended to prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 767 series airplanes was published in the **Federal Register** on September 15, 1999 (64 FR 50022). That action proposed to require replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 201 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 Model 747–400 series airplanes and 54 Model 767 series airplanes of U.S. registry will be affected by this AD. It will take approximately 6 work hours per engine accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,956 per engine. Based on these figures, the cost impact of this AD on U.S. operators of Model 747–400 series airplanes (4 engines per airplane) is estimated to be $673,296, or $17,264 per airplane. The cost impact of this AD on U.S. operators of Model 767 series airplanes (2 engines per airplane) is estimated to be $466,128, or $8,632 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–02 Boeing: Amendment 39–11462. Docket 99–NM–114–AD.

Applicability: Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999; and Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and insert flange on each thrust reverser half, with new, improved components, in accordance with Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999 (for Model 747–400 series airplanes); or Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999 (for Model 767 series airplanes); as applicable.

Note 2: The new, improved insert flange and pin bushing does not preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in event of a full powered deployment. Therefore, thrust reversers modified per this AD require installation of the new, longer deactivation pins having P/N 315T1604–6, as specified in the applicable service bulletin.

Note 3: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–78A2165, dated February 25, 1999, are considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999, or Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999, as applicable. This incorporation by reference was approved by

the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32191 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–64–AD; Amendment 39–11472; AD 99–26–13]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109A and A109A II Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Agusta Model A109A and A109A II helicopters, that currently requires inspecting each tail rotor blade (blade) for a crack and replacing any cracked blade. This amendment requires, before further flight, inspecting any blade with 400 or more hours time-in-service (TIS) for a crack and replacing any cracked blade. This amendment is prompted by another report of a cracked blade since the issuance of the existing AD. Two of the three occurrences of cracked blades involved the loss of the tail rotor and 90-degree gearbox. The actions specified by this AD are intended to prevent fatigue failure of the blade, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–64–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard A. Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 18, 1987, the FAA issued AD 87–03–14 R2, Amendment 39–5742, Docket No. 87–ASW–2 effective October 14, 1987, to require inspecting the blades for a crack and replacing any cracked blade with an airworthy blade. That action was prompted by two reports of cracked blades and separation of a tail rotor gearbox. That condition, if not corrected, could result in fatigue failure of a blade, loss of the tail rotor, and subsequent loss of control of the helicopter.

Since the issuance of that AD, another case has been reported of failure of a blade, P/N 109–0132–02, followed by the loss of the tail rotor and 90-degree gearbox assembly. The blade failed due to a crack in the central area of the blade near the tip of the root doubler. Agusta S.p.A. issued Bollettino Tecnico 109–110, dated July 28, 1999 (technical bulletin), which supersedes Telegraphic Technical Bulletin 109–5, dated January 27, 1987. The technical bulletin specifies dye-penetrant inspecting any blade, P/N 109–0132–02 (all dash numbers), with 400 or more hours TIS, for a crack before further flight and thereafter at intervals not to exceed 100 hours TIS. The technical bulletin also specifies visually inspecting each blade before the first flight of each day and replacing any cracked blade. In the technical bulletin, the manufacturer reemphasizes the importance of performing a detailed inspection of the blade by publishing additional procedures and requirements for personnel conducting the inspections. Agusta S.p.A. is attempting to develop an improved blade, which would provide a basis for terminating the inspection requirement.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A109A and A109A II helicopters of the same type design, this AD supersedes AD 87–03–14 R2, effective October 14, 1987. This AD requires dye-penetrant inspecting any blade, P/N 109–0132–02 (all dash numbers), with 400 or more hours TIS, for a crack before further flight and thereafter at intervals not to exceed 100 hours TIS. This AD also requires visually inspecting each blade before the first flight of each day and replacing any cracked blade with an airworthy blade. The actions are required to be accomplished in accordance with the technical bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, dye-penetrant inspecting each blade for a crack is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 54 helicopters will be affected by this AD, that it will take approximately 2.5 work hours to accomplish the inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,600 assuming 6 dye penetrant inspections a year.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–64–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5742 and by adding a new airworthiness directive (AD), Amendment 39–11472, to read as follows:

AD 99–26–13 Agusta S.p.A.: Amendment 39–11472. Docket No. 99–SW–64–AD. Supersedes Priority Letter AD 87–03–14 R2, Amendment 39–5742, Docket No. 87–ASW–2.

Applicability: Model A109A and A109A II helicopters, with tail rotor blade (blade), part number (P/N) 109–0132–02-all dash numbers, with 400 or more hours time-in-service (TIS), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a blade, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, dye-penetrant inspect each blade for a crack in accordance with the Compliance Instructions, Part I, of Agusta S.p.A. Bollettino Tecnico 109–110, dated July 28, 1999 (technical bulletin). Thereafter, at intervals not to exceed 100 hours TIS, dye-penetrant inspect each blade for a crack in accordance with the Compliance Instructions, Part III, of the technical bulletin. If a crack is found, replace the cracked blade with an airworthy blade before further flight.

(b) Before the first flight each day, visually inspect each blade for a crack using a 3 to 5 power magnifying glass in accordance with the Compliance Instructions, Part II, of the technical bulletin. If a crack is found, replace the cracked blade with an unairworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

(e) The inspections shall be done in accordance with the Compliance Instructions of Agusta S.p.A. Bollettino Tecnico 109–110, dated July 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 4, 2000.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano, Italy, AD 99–325, dated August 2, 1999.

Issued in Fort Worth, Texas, on December 9, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–32580 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–134–AD; Amendment 39–11469; AD 99–26–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that requires installation of a drain at each of the number 2 window frame assemblies in the airplane. This amendment is prompted by reports that flight deck emergency exits (number 2 windows) were found frozen shut after landing. The actions specified by this AD are intended to prevent water accumulation in the lower corners of the flight deck emergency exits (number 2 windows), which can freeze and prevent the exits from being used during an emergency evacuation.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, Aerospace Engineer,Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2207; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37918). That action proposed to require installation of a drain at each of the number 2 window frame assemblies in the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter has no objection to the proposed rule, and one commenter states that the rule does not affect it.

Request To Reduce Compliance Time

One commenter supports the proposed rule, but requests that the compliance time be reduced to 12 months from 18 months. The commenter also requests that the maximum time from publication of the final rule in the **Federal Register** until the effective date of the rule be no more than 30 days. The commenter states that based upon the proposed compliance times, adding in the administrative procedures time to publish the final rule and a possible ''delayed'' effective date, the affected airplanes may go through two more cold weather seasons before an operator must correct this unsafe condition.

The FAA does not concur with the commenter's request to reduce the compliance time of the AD, or accelerate the effective date to no more than 30 days after publication in the **Federal Register**. Reduction of the compliance time from 18 to 12 months would necessitate reopening the comment period, resulting in further delay of the AD. In developing the compliance time for this AD action, the FAA considered not only the safety implications of the unsafe condition addressed, but the average utilization rate of the affected fleet, the practical aspects of an orderly modification of the fleet during regular maintenance periods, the availability of parts, and the time necessary for the rulemaking process. The proposed compliance time of 18 months after the effective date of the AD was determined to be appropriate.

Also, the effective date for an AD action is not arbitrarily assigned, as the commenter implies. The Administrative Procedure Act (APA) requires that Federal agencies provide at least 30 days after publication of a final rule in the **Federal Register** before making it effective, unless ''good cause'' can be found not to do so. Under the APA, the basis for this finding is similar to the basis for a finding of good cause to dispense with notice and comment procedures in issuing rules. In the case of certainAD's, the nature of the action may be of such urgency that for the FAA to take any additional time to provide notice and opportunity for prior public comment would be impracticable; in those cases, the FAA finds good cause for making the rule effective in less than 30 days. In the case of this AD action, the FAA does not consider that the addressed unsafe condition is of such a critical nature that time could not be afforded for notice and the opportunity for the public to comment on the rule. It follows then, that there is no basis for finding good cause for making this rule effective in less than 30 days. For final rules following notice, the FAA usually assigns an effective date of 30 days after publication. No change to the final rule is necessary.

Request To Increase the Cost Estimate

One commenter requests that the number of work hours in the cost estimate be increased to 5 work hours from 3 work hours. The commenter states that Boeing Service Bulletin 737–56–1011, dated November 19, 1998, states that 5 hours are required per airplane to perform the installation, and the rulemaking cost impact analysis should be consistent with the work hours quoted in the service bulletin.

The FAA does not concur with the commenter's request. The cost impact information, below, describes only the ''direct'' costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 3 in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 144 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $536 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $40,812, or $716 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–26–10 Boeing: Amendment 39–11469. Docket 99–NM–134–AD.

Applicability: Model 737–600, –700, and –800 series airplanes; line numbers 1 through 144 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water accumulation in the lower corners of the flight deck emergency exits (number 2 windows), which can freeze and prevent the exits from being used during an emergency evacuation, accomplish the following:

Installation

(a) Within 18 months after the effective date of this AD, install a drain at each of the number 2 window frame assemblies in the airplane, in accordance with Boeing Service Bulletin 737–56–1011, dated November 19, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 737–56–1011, dated November 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 24, 2000.

Issued in Renton, Washington, on December 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32581 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–63–AD; Amendment 39–11474; AD 99–26–14]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Agusta S.p.A. Model AB412 helicopters. This action requires removing and replacing certain main rotor yokes with airworthy main rotor yokes before further flight. This amendment is prompted by the fatigue failure of a main rotor yoke (yoke). Fatigue analysis indicates that certain yokes are on the low end of the manufacturer's tolerance for thickness and do not have the desired margin of safety. This condition, if not corrected, could result in fatigue failure of the yoke, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta S.p.A. Model AB412 helicopters. The RAI advises removing and replacing the yoke, part number (P/N) 412–010–101–123 or -127, with an airworthy yoke, P/N 412–010–101–129.

Agusta S.p.A. has issued Alert Bollettino Tecnico 412–74, dated March 16, 1999, (technical bulletin) which specifies reducing the retirement life of the yoke, P/N 412–010–101–123 and −127, from 5000 hours to 4500 hours time-in-service (TIS), and replacing a yoke having 4500 or more hours TIS with an airworthy yoke, P/N 412–010–101–129, which has a retirement life of

5000 hours. The RAI classified this technical bulletin as mandatory and issued AD 99–179, dated April 16, 1999, to require replacing the yoke, P/N 412–010–101–123 or −127, with an airworthy yoke, P/N 412–010–101–129, before further flight, to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta S.p.A. Model AB412 helicopters of the same type design registered in the United States, this AD is being issued to prevent fatigue failure of the yoke, loss of a main rotor blade, and subsequent loss of control of the helicopter. This AD requires removing and replacing a yoke, P/N 412–010–101–123 or −127, with an airworthy yoke, P/N 412–010–101–129, before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, removing and replacing certain unairworthy yokes with airworthy yokes is required prior to further flight and this AD must be issued immediately.

None of the Agusta S.p.A. Model AB412 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 60 work hours to replace the yoke, at an average labor rate of $60 per work hour. Required parts would cost $89,742 per helicopter. Based on these figures, the cost impact of this AD would be $93,342 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–63–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not impose substantial direct compliance costs on states or local governments or have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the FAA has not consulted with States or local authorities prior to the publication of this rule.

The FAA has determined no U.S. registered helicopters are affected by this regulation and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–26–14 AGUSTA S.p.A.: Amendment 39–11474. Docket No. 99–SW–63–AD.

Applicability: Model AB412 helicopters, with main rotor yoke, part number (P/N) 412–010–101–123 or –127, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Before further flight, unless accomplished previously.

To prevent fatigue failure of a main rotor yoke (yoke), loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace each yoke, P/N 412–010–101–123 or –127, with an airworthy yoke, P/N 412–010–101–129.

Note 2: Agusta S.p.A. Bollettino Tecnico 412–74, dated March 16, 1999, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 4, 2000.

Note 4: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 99–179, dated April 16, 1999.

Issued in Fort Worth, Texas, on December 10, 1999.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–32735 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–15]

Establishment of Class E Airspace; Koliganek, AK; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the error in the geographic description of a final rule establishing Class E airspace at Koliganek, AK, that was published in the **Federal Register** on November 22, 1999 (64 FR 63677), Airspace Docket 99–AAL–15.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–30390, Airspace Docket 99–AAL–15, published on November 22, 1999 (64 FR 63677), established the Class E airspace at Koliganek, AK. The geographic coordinates for the Koliganek airport should read ''lat. 59° 43′ 36″ N., long. 157° 15′ 34″ W.'' This action corrects this error.

Correction to Final Rule

Accordingly, the final rule published on November 22, 1999 (FR Document 99–30390), is corrected as follows:

§ 71.1 [Corrected]

1. On page 63678, column 2, in the airspace designation for the Koliganek Airport, line 2, correct the coordinates to read ''(lat. 59° 43′ 36″ N., long. 157° 15′ 34″ W.)''.

Issued in Anchorage, AK, on December 3, 1999.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–32108 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–48]

RIN 2120–AA66

Amendment to Jet Routes J–78 and J–112; Evansville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Jet Route 78 (J–78) and J–112 between Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Louisville, KY, VORTAC. Specifically, this action adds Pocket City, IN, as a navigation facility and changeover point on J–78 and J–112. This action will enhance the management of air traffic operations and allow for better utilization of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by amending the legal description of J–78 and J–112 between the Farmington, MO, VORTAC and the Louisville, KY, VORTAC. Specifically, this action adds Pocket City, IN, as a navigation facility and changeover point on J–78 and J–112. The FAA is taking this action to enhance the management of air traffic operations and allow for better utilization of the navigable airspace.

Since this action merely involves a change in the legal description of J–78 and J–112, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 2004—Jet Routes

* * * * *

J–78 [Revised]

From Los Angeles, CA, via Seal Beach, CA; Thermal, CA; Parker, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; Farmington, MO; Pocket City, IN; Louisville, KY; Charleston, WV; Philipsburg, PA; to Milton, PA.

* * * * *

J–112 [Revised]

From Butler, MO, via Farmington, MO; Pocket City, IN; to Louisville, KY.

* * * * *

Issued in Washington, DC, on December 13, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–32885 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29864; Amdt. No. 1965]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–240), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51 and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provision of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designed FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conservation to FDS/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs

are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 10, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
11/09/99	TN	Murfreesboro	Murfreesboro Muni	9/8882	NDB Rwy 18, ORIG–B...
11/23/99	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	9/9285	ILS Rwy 30L (Cat I and II), Amdt 42B...
11/23/99	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	9/9286	ILS PRM Rwy 30L, Amdt 3B...
11/23/99	TX	Gainesville	Gainesville Muni	9/9274	NDB Rwy 17, Amdt 8...
11/23/99	TX	Gainesville	Gainesville Muni	9/9275	GPS Rwy 17, Orig...
11/25/99	LA	Bogalusa	George R. Carr Memorial Air Field	9/9311	GPS Rwy 36, Orig–A...
11/25/99	LA	Lafayette	Lafayette Regional	9/9307	VOR/DME Rwy 11, Amdt 1B...
11/25/99	LA	Lake Charles	Chennault International	9/9308	ILS Rwy 15R, Amdt 4A...
11/25/99	LA	Lake Charles	Chennault International	9/9309	VOR or GPS Rwy 33L, Amdt 3A...
11/25/99	LA	Lake Charles	Chennault International	9/9310	Radar–1, Amdt 1...
11/25/99	TN	Millington	Charles W. Baker	9/9296	GPS Rwy 18, Orig...
11/25/99	TX	Abilene	Abilene Regional	9/9302	VOR or GPS Rwy 22, Amdt 3A...
11/25/99	WV	Lewisburg	Greenbrier Valley	9/9304	NDB Rwy 4 Amdt 6...
11/30/99	LA	Eunice	Eunice	9/9396	NDB or GPS Rwy 16, Orig...
11/30/99	MO	Kirksville	Kirksville Regional	9/9386	VOR or GPS–A, Amdt 14...
11/30/99	MO	Kirksville	Kirksville Regional	9/9387	VOR/DME RNAV or GPS Rwy 36, Amdt 8...
11/30/99	MO	Kirksville	Kirksville Regional	9/9388	VOR/DME RNAV or GPS Rwy 18, Amdt 7...
11/30/99	MO	Kirksville	Kirksville Regional	9/9389	VOR/DME or GPS–B, Amdt 6...
11/30/99	MO	KIrksville	Kirksville Regional	9/9390	LOC/DME Rwy 36, Amdt 6A...
11/30/99	NC	Roanoke Rapids	Halifax County	9/9391	NDB or GPS Rwy 5, Amdt 3A...
11/30/99	TX	Midland	Midland Intl	9/9392	VOR/DME or TA–CAN Rwy 34L, Amdt 9A...
11/30/99	TX	Midland	Midland Intl	9/9393	LOC BC Rwy 28, Amdt 12A...
11/30/99	VA	Martinsville	Blue Ridge	9/9401	GPS Rwy 12 Orig...
11/30/99	VA	Martinsville	Blue Ridge	9/9402	NDB Rwy 30 Amdt 2A...
12/01/99	AR	Little Rock	Adams Field	9/9410	GPS Rwy 36, Orig...
12/01/99	CA	Vacaville	Nut Tree	9/9411	GPS Rwy 20 Amdt 1...
12/01/99	IA	Clarinda	Schenck Field	9/9428	NDB–A, Amdt 5...
12/01/99	LA	De Quincy	De Quincy Industrial Air-Park	9/9423	VOR/DME Rwy 33, Orig...
12/01/99	PR	San Juan	Luis Munoz Marin Intl	9/9418	VOR Rwy 8/10 Amdt 9A...
12/01/99	PR	San Juan	Luis Munoz Marin Intl	9/9426	ILS Rwy 10, Amdt 4A...
12/01/99	PR	San Juan	Luis Munoz Marin Intl	9/9427	HI–ILS/DME Rwy 10, Orig...
12/01/99	TX	Midland	Midland Intl	9/9415	NDB or GPS Rwy 10, Amdt 10...
12/01/99	TX	San Angelo	San Angelo Regional/Mathis Field	9/9416	LOC BC Rwy 21, Amdt 14...
12/02/99	CA	Riverside	Riverside Muni	9/9449	VOR or GPS Rwy 9 Amdt 9A...
12/02/99	CA	Riverside	Riverside Muni	9/9450	VOR or GPS–A Amdt 5A...
12/02/99	CA	Riverside	Riverside Muni	9/9451	VOR or GPS–B Orig–A...
12/02/99	CA	Vacaville	Nut Tree	9/9461	VOR or GPS–A Amdt 4...
12/02/99	IN	Terre Haute	Sky King	9/9467	VOR–B, Orig–A...
12/02/99	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	9/9453	ILS PRM Rwy 12L (Simultaneous Close Parallel), Amdt 3...
12/02/99	MO	St Louis	Lambert-St Louis Intl	9/9469	ILS Rwy 24, Amdt 45B...

FDC date	State	City	Airport	FDC No.	SIAP
12/02/99	TN	Nashville	Nashville Intl	9/9458	ILS Rwy 20R, Amdt 7B...
12/03/99	HI	Kailua-Kona	Keahole-Kona Intl	9/9517	LOC BC Rwy 35 Amdt 8...
12/03/99	HI	Kailua-Kona	Keahole-Kona Intl	9/9518	VOR or TACAN or GPS Rwy 35, Amdt 6...
12/03/99	HI	Kailua-Kona	Keahole-Kona Intl	9/9519	VOR or TACAN or GPS Rwy 17, Amdt 3...
12/03/99	HI	Kailua-Kona	Keahole-Kona Intl	9/9520	LOC Rwy 17 Amdt 6...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9484	ILS Rwy 9L Amdt 3...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9485	ILS Rwy 27R Amdt 9...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9486	NDB Rwy 27L Amdt 5...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9488	GPS Rwy 27L Orig...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9492	GPS Rwy 35 Orig...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9495	Converging ILS Rwy 17 Amdt 2A...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9496	Converging ILS Rwy 9R Amdt 3A...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9497	Copter ILS Rwy 17 Orig-A...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9498	ILS Rwy 9R Amdt 8...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9502	ILS Rwy 17 Amdt 5A...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9504	GPS Rwy 17 Orig...
12/03/99	PA	Philadelphia	Philadelphia Intl	9/9506	VOR/DME or GPS–A Amdt 1...
12/03/99	PR	San Juan	Luis Munoz Marin Intl	9/9510	HI–TACAN Rwy 8, Orig...
12/06/99	TX	Houston	George Bush Intercontinental Airport/ Houston.	9/9556	ILS Rwy 9, Amdt 4C...
12/06/99	VA	Martinsville	Blue Ridge	9/9547	GPS Rwy 30 Orig-A...

[FR Doc. 99–32887 Filed 12–17–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29863; Amdt. No. 1964]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure

identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effetive in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 10, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective on 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.35 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 30, 1999*

Fairbanks, AK, Fairbanks, Intl, NDB RWY 19R, Amdt 18
Fairbanks, AK, Fairbanks, Intl, ILS RWY 1L, Amdt 7
Fairbanks, AK, Fairbanks, Intl, ILS RWY 19R, Amdt 21
Fairbanks, AK, Fairbanks, Intl, RADAR–1, Amdt 2
Fairbanks, AK, Fairbanks, Intl, GPS RWY 1L Amdt 1
Fairbanks, AK, Fairbanks, Intl, GPS RWY 19R, Orig
Phoenix, AZ, Williams Gateway, ILS RWY 30C, Amdt 2
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, NDB RWY 17R, Amdt 8
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, NDB RWY 35C, Amdt 10
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS RWY 17R, Amdt 20
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS RWY 31R, Amdt 10
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 17R, Amdt 6
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 31R, Amdt 4
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 17L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 17R, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 17C, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 31R, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 35L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 35R, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, GPS RWY 35C, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, VOR/DME RNAV RWY 31R, Orig
Waco, TX, Waco Regional, LOC BC RWY 1, Amdt 10, CNACELLED
Waco, TX, Waco Regional, GPS RWY 1, Orig
Waco, TX, Waco Regional, GPS RWY 14, Orig
Waco, TX, Waco Regional, GPS RWY 19, Orig
Waco, TX, Waco Regional, GPS RWY 32, Orig
Rutland, VT, Rutland State, LOC RWY 19, Orig
Rutland, VT, Rutland State, LOC/DME 1 RWY 19, Amdt 2A

** * * Effective January 27, 2000*

Ankeny, IA, Ankeny Regional, VOR/DME RWY 36, Orig
Muscatine, IA, Muscatine, Muni, NDB RWY 6, Amdt 13, CANCELLED
Minden, LA, Minden-Webster, GPS RWY 1, Orig
Minden, LA, Minden-Webster, GPS RWY 19, Orig
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV OR GPS RWY 18, Amdt 10, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV OR GPS RWY 36, Amdt 10, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, VOR OR GPS–B, Amdt 2
Tipton, OK, Tipton Muni, GPS RWY 17, Orig
Bristol/Johnson/Kingsport, TN, Tri-Cities Regional TN/VA, RADAR–1, Amdt 16
Dallas-Fort Worth, TX, Dallas-Fort Worth International, VOR RWY 13R, Orig

** * * Effective February 24, 2000*

Gulf Shores, AL, Jack Edwards, GPS RWY 27, Amdt 1
Atka, AK, Atka, GPS–A, Orig
Koliganek, AK, Koliganek, GPS RWY 9, Orig
Koliganek, AK, Koliganek, GPS RWY 27, Orig
West Palm Beach, FL, Palm Beach Intl, RADAR–1, Amdt 9A, CANCELLED
Richmond, IN, Richmond Muni, ILS/DME RWY 24, Amdt 2A, CANCELLED
Richmond, IN, Richmond Muni, ILS RWY 24, Orig
Emmetsburg, IA, Emmetsburg Muni, NDB OR GPS RWY 13, Amdt 2
Emmetsburg, IA, Emmetsburg Muni, NDB OR GPS RWY 31, Amdt 2
Hutschinson, KS, Hutchinson Muni, VOR RWY 3, Amdt 19
Hutschinson, KS, Hutchinson Muni, VOR/DME RWY 21, Amdt 6
Hutschinson, KS, Hutchinson Muni, LOC BC RWY 31, Amdt 14
Hutschinson, KS, Hutchinson Muni, NDB RWY 13, Amdt 15
Hutschinson, KS, Hutchinson Muni, ILS RWY 13, Amdt 16
Hutschinson, KS, Hutchinson Muni, GPS RWY 3, Orig
Hutschinson, KS, Hutchinson Muni, GPS RWY 13, Orig
Hutschinson, KS, Hutchinson Muni, GPS RWY 21, Orig
Hutschinson, KS, Hutchinson Muni, GPS RWY 31, Amdt 1
Escanaba, MI, Delta County, LOC/DME BC RWY 27, Amdt 3A, CANCELLED
Escanaba, MI, Delta County, LOC BC RWY 27, Orig
Antlers, OK, Antlers Muni, NDB RWY 35, Amdt 3
Antlers, OK, Antlers Muni, GPS RWY 35, Amdt 1
Lakeview, OR, Lake County, VOR/DME–A, Orig

Lakeview, OR, Lake County, NDB OR GPS–A, Amdt 2, CANCELLED
Brookings, SD, Brookings Muni, VOR RWY 12, Amdt 12
Brookings, SD, Brookings Muni, VOR RWY 30, Amdt 11
Brookings, SD, Brookings Muni, ILS/DME RWY 30, Amdt 1, CANCELLED
Brookings, SD, Brookings Muni, ILS RWY 30, Orig
Brookings, SD, Brookings Muni, GPS RWY 12, Orig
Brookings, SD, Brookings Muni, GPS RWY 30, Orig
Giddings, TX, Giddings-Lee County, GPS RWY 17, Orig
Giddings, TX, Giddings-Lee County, GPS RWY 35, Orig
Houston, TX, Houston-Southwest, GPS RWY 9, Orig
Houston, TX, Houston-Southwest, GPS RWY 27, Orig
Ogden, UT, Ogden-Hinckley, GPS RWY 3, Orig
Juneau, WI, Dodge County, GPS RWY 20, Orig
Madison, WI, Dane County Regional-Truax Field, VOR RWY 21, Orig

The FAA published an Amendment in Docket No. 29852, Amdt. No. 1963 to Part 97 of the Federal Aviation Regulations (64 FR 67474, December 2, 1999) under section 97.33 effective January 27, 2000, which is hereby amended as follows:

Marquette, MI, Sawyer Intl, GPS RWY 19, Orig, change effective date from January 27, 2000 to February 24, 2000.

[FR Doc. 99–32886 Filed 12–17–99 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (Commission) amends is Appliance Labeling Rule (the Rule) by publishing new ranges of comparability to be used on required labels for gas-fired instantaneous water heaters, by deleting the range chart for oil-fired instantaneous water heaters, and by publishing new ranges of comparability to be used on required labels for compact dishwashers (the ranges of comparability for standard dishwashers remain unchanged). The Commission also announces that the current ranges of comparability for room air conditioners, storage-type water heaters, heat pump water heaters, pool heaters, furnaces, boilers, standard-sized dishwashers, central air conditioners, heat pumps, refrigerators, refrigerator-freezers, and freezers will remain in effect until further notice. Finally, the Commission amends the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to Part 305 that contain cost calculation formulas. These last amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity that was published on January 5, 1999 (64 FR 487) by the Department of Energy (DOE), and on February 17, 1999 (64 FR 7783) by the Commission.

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035); jmills@ftc.gov.

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979 (44 FR 66466 (Nov. 19, 1979)) in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances; refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters (59 FR 49556 (Sept. 28, 1994)), and contains requirements that pertain to fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)), certain plumbing products (58 FR 54955 (Oct. 25, 1993)), and certain lighting products (59 FR 25176 (May 13, 1994)).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from test procedures promulgated by DOE) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, boilers central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability'' scale. This scale shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, annually (by specified dates for each product type)[2] the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regulatory add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under Section 305.10 of the rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

The annual submissions of data for room air conditioners, water heaters (including storage-type, gas-fired instantaneous, and heat pump water heaters), furnaces, boilers, pool heaters, dishwashers, central air conditioners, heat pumps, refrigerators, refrigerator-freezers, and freezers have been made and have been analyzed by the Commission.

The ranges of comparability for room air conditioners, storage-type water heaters, heat pump water heaters, furnaces, boilers, pool heaters, central air conditioners, heat pumps, refrigerators, refrigerator-freezers, freezers, and standard-sized dishwashers have not changed by more

[1] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for room air conditioners, water heaters (storage-type, gas-fired instantaneous, and heat pump-type), furnaces, boilers, and pool heaters are due May 1; reports for dishwashers are due June 1; reports for central air conditioners and heat pumps are due July 1; reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

than 15% from the current ranges for these products. Therefore, the current ranges for these products will remain in effect until further notice.[3]

This means that manufacturers of storage-type water heaters, furnaces, and boilers must continue to use the ranges that were published on September 23, 1994, and that manufacturers of storage-type water heaters must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1994 Representative Average Unit Costs of energy for electricity (8.41 cents per kilowatt-hour), natural gas (60.4 cents per therm), propane (98 cents per gallon), and/or heating oil ($1.05 per gallon) that were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699).

Manufacturers of heat pump water heaters and pool heaters must continue to use the ranges that were published on August 21, 1995. Manufacturers of room air conditioners must continue to use the corrected ranges for room air conditioners that were published on November 13, 1995. Manufacturers of heat pump water heaters, pool heaters, and room air conditioners must continue to base the disclosures of estimated annual operating cost required at the boom of EnergyGuides for these products on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour), natural gas (63 cents per therm), propane (98.5 cents per gallon), and/or heating oil ($1.008 per gallon) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9295).

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to use the ranges of comparability that were published on December 2, 1998. They must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1998 Representative Average Unit Cost for electricity (8.42 cents per kilowatt-hour), that was published by DOE on December 8, 1997 (62 FR 64574), and by the Commission on December 29, 1997 (62 FR 67560).

The data submissions for gas-fired instantaneous water heaters have resulted in new ranges of comparability figures for these products, which appear below. In addition, the capacity measurement for gas-fired instantaneous water heaters in the range chart is now expressed in terms of maximum flow rate, instead of first hour rating, to be consistent with amendments to the Department of Energy's test procedure that were published in the **Federal Register** on May 11, 1998, at 63 FR 25996, with an extended effective date of June 5, 1999 (63 FR 71630 (Dec. 29, 1998)). These new ranges of comparability supersede the current ranges for gas-fired instantaneous water heaters.[4] As of the effective date of these new ranges, manufacturers of gas-fired instantaneous water heaters must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for gas-fired instantaneous water heaters on the 1999 Representative Average Unit Costs of Energy for natural gas (68.8 cents per therm) and propane (77 cents per gallon) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783).

The data submissions for dishwashers show a significant change in both the high and low ends of the ranges of comparability scale for compact models, but only a slight change in the high end of the range scale for standard models and no change in the low end for standard models. The change in the compact ranges has resulted from the deletion of the only model available prior to 1999 and the addition of two new models. Thus, the new numbers reflect entirely new models, and it is appropriate to publish new ranges of comparability to reflect these changes. As just noted, however, the ranges for standard-sized dishwashers have changed only slightly. Moreover, the vast majority of dishwashers fall into the standard category; relatively few are offered in the compact category.

The Commission's classification of ''standard'' and ''compact'' dishwashers is based on internal capacity.[5] Thus, the Commission believes that consumers looking for a standard model are unlikely to be interested in a compact model, and vice-versa. Rather than require new ranges for the vast majority of dishwashers when only the few in the compact category have changed significantly, therefore, the Commission has decided to publish new ranges of comparability only for compact dishwashers, to inform consumers better about the compact dishwasher models currently being manufactured. These new ranges of comparability supersede the current ranges for compact-sized dishwashers.[6] As of the effective date of these new ranges, manufacturers of compact-sized dishwashers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for compact-sized dishwashers on the 1999 Representative Average Unit Costs of Energy for electricity (8.22 cents per kilowatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783).

The Commission is leaving the current 1997 ranges of comparability for standard-sized dishwashers in place. This means that manufacturers of standard-sized dishwashers must continue to use the ranges of comparability that were published on August 25, 1997, and must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1997 Representative Average Unit Costs of Energy for electricity (8.31 cents per kilowatt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996 (61 FR 58679), and by the Commission on February 5, 1997 (62 FR 5316).

In consideration of the foregoing, the Commission revises Appendices C and D4 of part 305 by publishing the

[3] The current ranges for storage-type water heaters, furnaces, and boilers were published on September 23, 1994 (59 FR 48796). The current ranges for heat pump water heaters, pool heaters, and room air conditioners (originally) were published on August 21, 1995 (60 FR 43367). A corrected version of the ranges for room air conditioners was published on November 13, 1995 (60 FR 56945, at 56949). The current ranges for central air conditioners and heat pumps were published on September 16, 1996 (61 FR 48620). The current ranges for refrigerators, refrigerator-freezers, and freezers were published on December 2, 1998 (63FR 66428).

[4] The current ranges for gas-fired instantaneous water heaters (Appendix D4) were published on August 28, 1998 (63 FR 45942), having first been published in 1995 (60 FR 43367 (Aug. 21, 1995)). In 1995, the Commission also published a range chart for oil-fired instantaneous water heaters (Appendix D5) because, even though the DOE test did not yet cover these products, DOE had proposed in 1995 to develop a test to cover them. Because no data for oil-fired instantaneous water heaters has ever been submitted, the range chart for these products shows ''no data submitted'' for all size categories. DOE withdrew its proposal to develop a final test for oil-fired instantaneous water heaters in the May 11, 1998 amendments to the water heater test procedure (63 FR 25996 at 25998). Therefore, the Commission today deletes the range chart for oil-fired instantaneous water heaters.

[5] Appendix C of the Commission's Rule defines ''Compact'' as including countertop dishwasher models with a capacity of fewer than eight (8) place settings and ''Standard'' as including portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings are to be determined in accordance with appendix C to 10 CFR Part 430, subpart B, of DOE's energy conservation standards program. In contrast, DOE's program defines ''standard'' and ''compact'' on the basis of external cabinet width.

[6] The current ranges for compact-sized (and standard-sized) dishwashers (Appendix C) were published on August 25, 1997 (62 FR 44890).

following ranges of comparability for use in required disclosures (including labeling) for compact-size dishwashers and gas-fired instantaneous water heaters beginning March 22, 2000; amends the cost calculation formulas in Appendices H and I to Part 305 that manufacturers of central air conditioners and heat pumps must include on fact sheets and in directories, effective March 22, 2000; and deletes Appendix D5 of Part 305, effective immediately.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix C to Part 305 is removed and Appendices C1 and C2 are added to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

Range Information

''Compact'' includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact	277	426

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for compact sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 1999 Representative Average Unit Costs for electricity (8.22¢ per kilowatt-hour) and natural gas (68.8 ¢ per therm), and the text below the box must identify the costs as such.

Appendix C2 to Part 305—Standard Dishwashers

Range Information

''Standard'' includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard	344	699

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for standard-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 1997 Representative Average Unit Costs for electricity (8.31¢ per kilowatt-hour) and natural gas (61.2¢ per therm), and the text below the box must identify the costs as such.

3. Appendix D4 to Part 305 is revised to read as follows:

Appendix D4 to Part 305—Water Heaters—Instantaneous—Gas

Range Information

Capacity (maximum flow rate); gallons per minute (gpm)	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Under 1.00	233	233	256	256
1.00 to 2.00	230	234	252	256
2.01 to 3.00	188	218	206	239
Over 3.00	187	238	197	260

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for instantaneous water heaters, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 1999 Representative Average Unit Costs for natural gas (68.8¢ per therm) and propane (77¢ per gallon), and the text below the box must identify the costs as such.

4. Appendix D5 to Part 305 is removed.

5. Appendix D6 to Part 305 is redesignated as Appendix D5.

6. In section 2 of Appendix H of part 305, the text and formulas are amended by removing the figure ''8.42¢'' wherever it appears and by adding, in its place,the figure ''8.22¢''; and by removing the figure ''12.64¢'' wherever it appears and by adding, in its place, the figure ''12.4¢''.

7. In section 2 of Appendix I of part 305, the text and formulas are amended by removing the figure ''8.42¢'' wherever it appears and by adding, in its place, the figure ''8.22¢''; and by removing the figure ''12.64¢'' wherever it appears and by adding, in its place, the figure ''12.34¢''.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32894 Filed 12–17–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 8846]

RIN 1545–AV45

Deductions for Transfers for Public, Charitable, and Religious Uses; In General Marital Deduction; Valuation of Interest Passing to Surviving Spouse; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, December 3, 1999, 64 FR 67763, relating to the effect of certain administration expenses on the valuation of property for marital and charitable deduction purposes.

DATES: This correction is effective December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Ryan, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 2055 and 2056 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8846) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8846), which were the subject of FR Doc. 99–31094, is corrected as follows:

§ 20.2055–3 [Corrected]

1. On page 67765, column 1, § 20.2055–3(b)(1)(ii), line 5 from bottom of the paragraph, the language ''related to investment, preservation, and'' is corrected to read ''related to investment, preservation, or''.

§ 20.2056(b)–4 [Corrected]

2. On page 67765, column 3, § 20.2056(b)–4(d)(1)(ii), line 5 from the bottom of the paragraph, the language ''related to investment, preservation, and'' is corrected to read ''related to investment, preservation, or''.

3. On page 67766, column 3, § 20.2056(b)–4(d)(5), Example 5, line 6 from the bottom of the paragraph, the language ''remains $1,800,000. The applicable'' is corrected to read ''is $2,000,000. The applicable''.

4. On page 67766, column 3, § 20.2056(b)–4(d)(5), Example 5, lines 2 and 3 from the bottom of the paragraph, the language ''trust and $200,000 of the $2,000,000 passing to the marital trust so that the amount of'' is corrected to read ''trust so that the amount of''.

5. On page 67766, column 3, § 20.2056(b)–4(d)(5), Example 7, line 7, the language ''decedent's child. Under the terms of the'' is corrected to read ''decedent's child. Under the terms of the governing instrument and''.

Cynthia E. Grigsby,

Chief, Regulations Unit,

Assistant Chief Counsel (Corporate).

[FR Doc. 99–32915 Filed 12–17–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP(OJP)–1258]

RIN 1121–ZB92

Corrections Program Office's Interpretation of Eligibility Requirements for Truth-in-Sentencing Incentive Grants Under 42 U.S.C. 13704(a)(2)

AGENCY: Office of Justice Programs, Corrections Program Office, Justice.

ACTION: Interpretive rule.

SUMMARY: The Corrections Program Office, Office of Justice Programs, U.S. Department of Justice, is publishing an interpretive rule which reiterates current law to remind States awarded funds under the Truth-in-Sentencing Incentive Grants program, 42 U.S.C. 13704, of the pre-existing eligibility requirements for receiving and retaining funds under subsection (a)(2) of the statute. This interpretive rule also advises recipient States of OJP's existing enforcement policy for non-compliance with the statutorily-mandated grant terms.

EFFECTIVE DATE: This interpretive rule is effective on December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Phil Merkle, Special Advisor to the Director, Corrections Program Office, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531. Telephone: (202) 305–2550; Fax: (202) 307–2019.

SUPPLEMENTARY INFORMATION:

Background

Purpose

The Corrections Program Office, Office of Justice Programs (OJP) is issuing this interpretive rule to make explicit its interpretation and application of the eligibility requirements in section 13704(a)(2) of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program (''VOI/TIS''), 42 U.S.C. 13704 *et seq.* This document is designed to aid States in assessing their continuing eligibility for federal Truth-in-Sentencing funding and sets forth situations in which OJP will exercise its enforcement discretion. This interpretive rule does not create or destroy any rights, assign any new duties, or impose any additional obligations, implied or otherwise.

Authority

OJP, as the agency charged with administering and enforcing the VOI/TIS grant program, has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion. Moreover, OJP's construction of the VOI/TIS statute, in this instance, merely amounts to implementing existing positive law previously legislated by Congress.

Truth-in-Sentencing Incentive Grant Program

As part of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 (''1994 Crime Bill''), Congress enacted the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program, 42 U.S.C. 13701 *et seq.*, which offered prison construction grants and other correctional institution improvement funding to encourage States to adopt tougher sentencing policies for violent offenders.

In the FY 1996 Omnibus Appropriations Act, Public Law 104–134, Congress significantly amended this legislation. Currently, the Truth-in-Sentencing Incentive Grants program provides funds for eligible States to build or expand correctional facilities for the purpose of incarcerating criminals convicted of committing violent crimes. 42 U.S.C. 13704. To qualify for grant funding, States must have in effect sentencing laws that either provide for violent offenders to serve not less than 85% of their sentences, or must meet other requirements that ensure that violent offenders remain incarcerated for substantially greater percentages of their imposed sentences. 42 U.S.C. 13704(a).

Qualification as an Interpretive Rule

This interpretive rule highlights and discusses the grant eligibility requirements in section 13704(a)(2) of the Truth-in-Sentencing Incentive Grants Act to make certain that States awarded grant funds under this provision fully understand their legal duty to implement qualifying truth-in-sentencing laws within the three-year statutory time frame. Because this rule merely explains, rather than adds to, the substantive law that already exists, it is exempt from legislative rulemaking procedures.

Specifically, this rule qualifies as an interpretive rule under the Administrative Procedure Act because it is a rule or statement issued by an agency to advise the public of the agency's construction of one of the statutes it administers. See, *e.g., Shalala, Secretary of Health and Human Services* v. *Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). This rule does

not establish any new standard and in fact, is consistent with the statute's mandate. As such, it qualifies as an interpretive rule not subject to the Administrative Procedure Act's notice-and-comment provisions. 5 U.S.C. 553, 553(b)(3)(A).

Interpretation of 42 U.S.C. 13704(a)(2)

Eligibility Criteria

In this interpretive rule, OJP explains its construction of section 13704(a)(2) of the Truth-in-Sentencing Incentive Grants provision for determining ''eligibility'' for federal funding assistance where the State has enacted, but not yet implemented, a truth-in-sentencing law. 42 U.S.C. 13704(a)(2).

It is OJP's position that a State is eligible for truth-in-sentencing grant funds if it has a truth-in-sentencing law that has been enacted, but not yet implemented, which requires the State, not later than three years after submitting its grant application, to provide that persons convicted of ''Part 1 violent crimes'' serve not less than 85 percent of the sentence imposed. Additionally, as expressed in the Truth-in-Sentencing grant application packets, each State that applies for funding under section 13704(a)(2) must include a detailed time line which culminates in the actual implementation of a qualifying Truth-in-Sentencing law within three years of the submission of the grant application.

While a State does have latitude to modify the exact sequence of events within this time line, a State cannot ignore the requirement that a qualifying Truth-in-Sentencing law must actually be implemented within the three-year period.

Enforcement Policy

If a State receives funding by asserting eligibility under section 13704(a)(2) but then fails to actually implement a qualifying truth-in-sentencing law within three years of submitting its initial application, OJP treats this event as a failure to substantially comply with the statutorily-mandated grant conditions and as a violation of the terms of the grant agreement.

As the agency charged with administering and enforcing the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Act, OJP can suspend or terminate a State's truth-in-sentencing funding for substantial noncompliance with the statute and the grant terms. Specifically, OJP may, in the exercise of its discretion, initiate federal enforcement actions, under the part 18 termination procedures, against those recipient States that fail to adhere to the grant requirements after receiving grant funds. 28 CFR part 18. Ultimately, where OJP determines it necessary to terminate a Truth-in-Sentencing grant, OJP can require the noncomplying State to repay the grant funds awarded in excess of the amount actually due. 28 CFR 66.52. This excess amount may include the grant funds awarded during the period in which the State had promised to implement a truth-in-sentencing law.

In sum, OJP shall continue to administer and enforce section 13704(a)(2) in accordance with this interpretation.

Publication

Because this interpretive rule aims to serve as a reminder to recipients under the Truth-in-Sentencing Incentive Grants program and thus, merely reiterates the statutorily-mandated conditions for the award and retention of grant funding, OJP has chosen not to publish this interpretive rule in the Code of Federal Regulations (but reserves the right to do so in the future). However, to ensure that the States recognize the importance of the Truth-in-Sentencing Grants Program and are fully aware of their preexisting duties under section 13704(a)(2) for continued funding, OJP will distribute copies of this interpretive rule with the Truth-in-Sentencing Incentive Grants Program Application Packets in early 2000. Additionally, OJP intends to post this interpretive rule, as published in the **Federal Register**, on the Internet at the Corrections Program Office's website at http://www.ojp.usdoj.gov/cpo.htm.

Regulatory Evaluation Summary

OJP has reviewed this interpretive rule in accordance with Executive Order 12866 and the Regulatory Flexibility Act of 1980. It is not a ''significant regulatory action'' as defined in the Executive Order. Additionally, this interpretive rule does not impose a significant economic impact on a substantial number of small entities and will not constitute a barrier to international trade. Because no further economic evaluation is warranted, this interpretive rule is not subject to review by the Office of Management and Budget.

In accordance with Executive Order 13132, this interpretive rule will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it lacks sufficient federalism implications to warrant the preparation of a federalism assessment.

Because this interpretive rule does not compel the expenditure by State, local and tribal governments, or by the private sector, in the aggregate of $100 million or more in any one year, and will not uniquely affect small governments, OJP is not required to take any actions under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

This interpretive rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 because it will not result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), OJP has determined that there are no requirements for information collection associated with this rule.

Finally, this interpretive rule has no direct or indirect effect on the environment, and no extraordinary circumstances exist which would require OJP to prepare an environmental assessment or environmental impact statement.

Dated: December 14, 1999.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–32807 Filed 12–17–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–99–184]

RIN 2115–AA97

Safety Zone: New Years Eve '99 Fireworks Display, Southampton, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the New Years Eve '99 Fireworks Display to be held off of Fairlee St., Southampton, NY, on December 31, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display.

Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 11:30 p.m. EDT on December 31, 1999 to 12:30 a.m. EDT on January 1, 2000.

ADDRESSES: Documents relating to this Temporary Final Rule are available for inspection or copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512 between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

Mr. and Mrs. William Michaelcheck, of New York, NY, are sponsoring a 12 minute fireworks display off Fairlee St., Southampton, NY. The safety zone will be in effect from 11:30 p.m. EDT, December 31, 1999 until 12:30 a.m. EDT, January 1, 2000. The safety zone covers all waters of the Atlantic Ocean within a 1200 foot radius of the fireworks launching barge which will be located off Fairlee St., Southampton, NY, in approximate position; 40°–51′36″, 072°–23′00″W, (NAD 1983). This zone is required to protect the maritime community form the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Atlantic Ocean and entry into this zone will be restricted for only 1 hour. Although this Regulation prevents traffic from translating this section of the Atlantic Ocean, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally

Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–184 to read as follows:

§ 165.T01–CGD1–184 New Years Eve '99 Fireworks Display, Southampton, NY.

(a) Location. The safety zone includes all waters of the Atlantic Ocean within a 1200 foot radius of the launch site located off Fairlee St., Southampton, NY. In approximate position 40°–51′36″N, 072°–23′00″W (NAD 1983).

(b) *Effective date.* This section is effective on December 31, 1999 from 11:30 p.m. until 12:30 a.m., January 1, 2000.

(c)(1) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: November 30, 1999.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–32884 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 102–AC76

National Capital Region, Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Temporary final rule.

SUMMARY: The National Park Service is temporarily amending the current regulation for the National Capital Region. This amendment will allow use of the area immediately surrounding the Washington Monument for fireworks for the official America's Millennium celebration marking the beginning of the year 2000. The temporary amendment will expire at the conclusion of the celebration and the fireworks' removal but no later than January 8, 2000.

DATES: This rule becomes effective on December 20, 1999 and terminates on January 8, 2000.

FOR FURTHER INFORMATION CONTACT: Superintendent Arnold Goldstein, National Capital Parks—Central, 900 Ohio Drive SW, Washington, DC 20240, telephone (202) 585–9880.

SUPPLEMENTARY INFORMATION: The Washington Monument is located on the National Mall and honors our Nation's first President. Begun on July 4, 1848 and dedicated on February 21, 1885, the Washington Monument has undergone three restorations. The current phase of the restoration has required the construction of scaffolding surrounding the memorial, which includes strips of architectural fabric attached to the exterior of the scaffolding. The work of architect Michael Graves, this scaffolding and architectural fabric has allowed the National Park Service to have an aesthetic way to camouflage the construction zone necessary for the Washington Monument's exterior stonework inspection and repair, while retaining a sense of architecture of this great obelisk.

Work on the exterior surfaces of the Washington Monument, including use of the scaffolding, in this phase of restoration has been completed. The conclusion of the restoration also coincides with the official America's Millennium celebration that will be occurring on parts of the National Mall. Given the presence of the scaffolding and architectural fabric surrounding the Washington Monument, we believe that there is a unique opportunity to have fireworks at this great memorial marking the beginning of the year 2000, in coordination with the official America's Millennium celebration. The Lincoln Reflecting Pool will also be used as an integral part of the official America's Millennium celebration fireworks display at the Washington Monument. Finally, these fireworks, done by the nationally recognized fireworks company of Grucci, have been designed to avoid damaging the Washington Monument.

Under the existing regulation at 36 CFR 7.96, the Washington Monument is surrounded by a restricted zone which consists of the area enclosed within the inner circle that surrounds the obelisk. The restricted zone is similar to three other designated memorials' restricted zones where permits for demonstrations and special events are prohibited by NPS regulation. This restricted zone is intended to maintain the memorials in an atmosphere of calm, tranquility, and reverence as well as protect legitimate security and park value interests. 41 FR 12880 (1976) (Final Rule). The restricted zone currently includes the scaffolding and its architectural fabric, on which the fireworks would be placed.

There has always been a regulatory exception for the Washington Monument's restricted zone that allows the official annual commemorative Washington birthday celebration. With the Washington Monument's exterior surfaces complete and prior to dismantling the scaffolding, we believe it appropriate to temporarily revise the NPS regulations to allow for this special, one-time use. This rule makes that temporary revision. The temporary revision applies only for the period needed to set up, conduct, and remove the fireworks for the official America's Millennium celebration which will occur at midnight December 31, 1999, in coordination with the official America's Millennium celebration. Immediately after the celebration and the fireworks' removal, NPS's regulation will revert to its former wording.

Procedural Matters

Administrative Procedure Act

Because this revision is necessary to enable the official America's Millennium celebration to have fireworks at the Washington Monument at midnight December 31, 1999, and because of the limited time remaining

before December 31, 1999, we are publishing this revision as a final rule. In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the short time period available. We also believe that publishing this rule 30 days before the rule becoming effective would be impractical because of the limited time remaining before December 31, 1999. A 30-day delay in this instance would be unnecessary and contrary to the public interest. Therefore, under the Administrative Procedure Act (5 U.S.C. 553(d)(3)), we have determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the **Federal Register**.

Federalism (Executive Order (E.O. 12612)

In accordance with E.O. 12612, this rule does not have significant Federalism implications.

Takings Implications Assessment (E.O. 12630)

In accordance with E.O. 12630, the rule does not have takings Implications.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review the Office of Management and Budget (OMB) under E.O. 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act of 1995

This rule does not contain any collection of information requiring approval under the Paperwork Reduction Act.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 36 CFR Part 7

National parks, monuments and memorials, recreation.

For the reasons given in the preamble, part 7 of title 36 of the Code of Federal Regulations is amended to read as set forth below. This amendment is effective from December 20, 1999 to January 31, 2000.

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under D.C. Code 8–137 (1981) and 40–721 (1981).

2. In § 7.96, in paragraph (g)(3)(ii)(A), the following words are added after the word ''ceremony'': ''and for fireworks for the official America's Millennium celebration''.

Dated: December 15, 1999.

John Leshy,

Solicitor, Department of the Interior.

[FR Doc. 99–32931 Filed 12–17–99; 8:45 am]

BILLING CODE 4710–70–M

ENVIRONMENTAL PROTECTION AGENCY

CFR Parts 51 and 52

[AD–FRL–6511–8]

New Source Review (NSR) Sector Based Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting.

SUMMARY: This is an announcement of a public meeting on January 13, 2000 to discuss EPA's thinking on an alternative approach for compliance with new source review (NSR) requirements. Our thinking on such an approach has advanced to the point where we have developed components that could be workable specifically for the utility sector. At the meeting we plan to present this current thinking, and to receive comment from stakeholders on the approach as it would apply to utilities.

DATES: The meeting will convene at 10:00 a.m., and end at 3:30 p.m. on January 13, 2000.

ADDRESSES: The meeting will be held in the Polaris Room, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004, telephone (202) 312–1300. All written documents submitted at this public meeting will be placed in the Docket # A–99–44 within approximately 2 weeks after the meeting. The Docket is available for public inspection and copying between 8:00 a.m. to 5:00 p.m., weekdays, at the EPA's Air Docket (6102), Room M–1500, 401 M Street, Southwest, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION: For questions concerning the topics to be discussed, please contact Kathy Kaufman at (919) 541–0102, telefax (919) 541–5509, E-mail: kaufman.kathy@epa.gov or by mail at U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711.

As of the date of this announcement, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Pam Smith, U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711; telephone (919) 541–0641 or E-mail: smith.pam@epa.gov, to confirm the January 13, 2000 meeting location and dates.

SUPPLEMENTARY INFORMATION: The EPA's preliminary thinking about seating arrangements is that seating around a discussion table will be reserved for 40–45 people divided equally among representatives from: (1) the industrial sector, (2) the public interest groups, (3) State and local governments or agencies,

and (4) the Federal government. There will be additional seating, theater style, in the meeting room, available on a first come first served basis, for about 100 people. To the extent possible, everyone who wishes to speak will have an opportunity. We will provide an agenda at the meeting. If you plan to attend the meeting, please E-mail or call Pam Smith, at E-mail address smith.pam@epa.gov or telephone number (919) 541–0641, by January 6, 2000.

Dated: December 10, 1999.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–32866 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM39–1–7416a; FRL–6504–9]

Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Revised Maintenance Plan for Albuquerque/ Bernalillo County; Albuquerque/ Bernalillo County, New Mexico; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, by direct final action, a revision to the Albuquerque/Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP). The Governor of New Mexico requested EPA approval of the revision on February 4, 1999. The Governor requested approval of changes and adjustments to the baseline emission inventory, approval of a new Motor Vehicle Emissions Budget, and revisions to budget projections in the CO maintenance plan.

DATES: This rule is effective on February 18, 2000 without further notice, unless EPA receives adverse comment by January 19, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should address comments on this action to Mr. Thomas Diggs, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking, including the technical support document may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and the Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza Room 3023, Albuquerque, New Mexico 87102. If you plan to view the documents at either location, please call 48 hours ahead of the time you plan to arrive.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky of the EPA Region 6 Air Planning Section, at (214) 665–7214, or *WITOSKY.MATTHEW@EPA.GOV.*

I. Supplementary Information

Overview

The information in this section is organized as follows:

1. What action is the EPA taking today?

The EPA is approving a revision to the Albuquerque and Bernalillo County carbon monoxide maintenance plan. Hereafter, Albuquerque and Bernalillo County will be referred to as ''Albuquerque.'' Albuquerque requested a revision to the point, area, and mobile source emissions budget categories, and the overall budget ceiling in the plan. This includes a revision to the on-road mobile source budget, also referred to as the Motor Vehicle Emissions Budget (MVEB). The original maintenance plan budget was adopted with the request to redesignate the area to attainment.

2. Why must the EPA approve a change to the maintenance plan?

The Federal Clean Air Act as Amended in 1990, (the Act) requires States (or in this case, Albuquerque) to seek EPA approval of revisions to maintenance plans, because such plans are part of the federally enforceable SIP. Albuquerque submitted the revised inventory and emissions budget, to address a potential conflict between the on-road mobile source emissions projected by the proposed Metropolitan Transportation Plan, and the CO MVEB for the years 1999 and 2002. Albuquerque indicated that previous on-road mobile emissions projections and point source projections were too low, and the area source projections were too high. Without a revision, the area's on-road mobile emissions might surpass the MVEB in the maintenance plan.

3. What changes in the Albuquerque maintenance plan are being approved?

The EPA is approving Albuquerque's adjustment to the three main categories of emissions in the maintenance plan. The following is a complete table of the previous maintenance plan budget, and the revision to the maintenance plan budget. A more detailed review of the revision follows this table.

ALBUQUERQUE MAINTENANCE PLAN—CARBON MONOXIDE EMISSIONS IN TONS PER DAY (TPD): MAINTENANCE PLAN AND REVISION

Category	Version	1996	1999	2002	2005	2006
Highway mobile (MVEB):	Plan	235.50	207.95	197.13	199.12	202.95
	Revised	266.99	229.09	209.01	205.67	205.86
Off road mobile:	Plan	48.12	50.48	52.86	55.22	55.98
	Revised	50.90	52.68	54.46	56.25	56.84
Area:	Plan	116.28	120.98	125.71	130.42	131.98
	Revised	67.19	69.87	72.60	75.25	76.09
Stationary:	Plan	0	0	0	0	0

ALBUQUERQUE MAINTENANCE PLAN—CARBON MONOXIDE EMISSIONS IN TONS PER DAY (TPD): MAINTENANCE PLAN AND REVISION—Continued

Category	Version	1996	1999	2002	2005	2006
	Revised	3.92	27.40	27.54	27.68	27.72
Total:	Plan	399.90	379.41	375.70	384.76	390.91
	Revised	389.00	379.04	363.61	364.85	366.51

a. Emissions Budget categories.

(1) Point Source

The maintenance plan adopted by Albuquerque and approved by the EPA projected that no point sources would exist in the maintenance area in the year 2006, meaning the area would have no stationary source CO emissions. Albuquerque now projects that point source emissions will equal 27.72 tpd. These facilities are or will be operating under appropriate local permits.

(2) Mobile source

Albuquerque's revision indicated that on-road emission levels were higher in 1996 than originally projected. The previously approved projections were 235.5 tpd, while Albuquerque now estimates that emissions in 1996 were 266.9. The following table shows how the previous and new projections compare. The maintenance plan adopted by Albuquerque and approved by the EPA in 1995 projected that on-road mobile sources would contribute 202.95 tpd to the maintenance area in the year 2006, down from a 1996 baseline level of 235.50 tpd. These numbers constitute the MVEB adopted previously. The revised maintenance plan estimates that on-road mobile sources will contribute 205.86 tpd, down from a revised baseline of 266.99 tpd. Below is a table comparing the change in motor vehicle emission budgets.

ALBUQUERQUE CO MAINTENANCE PLAN COMPARISON OF SELECTED YEARS ON-ROAD MOBILE BUDGET (MVEB) IN TPD APPROVED PLAN AND REVISION

SIP revision	1996	1999	2002	2005	2006
Maintenance plan, 1995	235.50	207.95	197.13	199.12	202.95
Revision to maintenance plan, 1999	266.99	229.09	209.01	205.67	205.86
Difference	31.49	21.14	11.88	6.55	2.91

In this action, the EPA is approving the following MVEB, which will be used for transportation conformity purposes.

ALBUQUERQUE CO MAINTENANCE PLAN APPROVED MOTOR VEHICLE EMISSIONS BUDGET (MVEB), IN TONS PER DAY

Year	1996	1999	2002	2005	2006
On-road mobile emissions budget	266.99	229.09	209.01	205.67	205.86

(a) How can the emission projections differ so much?

On-road mobile emissions tend to react to three factors. First, vehicles become cleaner over time as older vehicles are replaced with newer vehicles that emit less pollution. Much of the reduction in emissions depicted above reflects vehicle turnover. The second factor, that tends to drive up emissions, is the growth of Vehicle Miles Traveled (VMT). Both sets of projections predicted continued growth in VMT. However, the revised projections indicate that VMT will not grow as fast as originally predicted. The above also indicates that, over time, lesser emissions that result from vehicle turnover is the stronger factor, so the net result is still lower emissions over time.

Albuquerque revised their estimates of VMT downward, reflecting their expectation that growth in the area would be less robust than during the previous period. The forecasts predict that annual growth will drop from 1.93 percent per year in 1996, to 1.46 per year in 2005 within Bernalillo County. This deceleration is partly due to a predicted shift in growth patterns to outlying areas, from Bernalillo County. Counties surrounding the maintenance area, such as Valencia, Sandoval, and Torrance, are expected to grow faster. Although growth of outlying areas may impact emission levels, Albuquerque's estimates do not indicate the impact will cause the maintenance area to deteriorate into CO nonattainment.

The third factor that affected the emission inventory and projections was temperature assumptions in the model. Albuquerque updated the temperature data used in the MOBILE5 model, to compute vehicle emissions. The MOBILE5 model generates emission rates for vehicles on a grams-per-mile basis, relying on locally recorded temperatures to generate the rate. Ambient temperature affects CO emissions from internal combustion (i.e., vehicle) engines. In the original request for redesignation, Albuquerque input temperature data from 1991, 1992, and 1993 to generate the appropriate emission factors. Their revised inventory uses temperature data from 1994, 1995, and 1996. This change in temperature, when input into MOBILE5, produces a lower grams/mile emission rate for local vehicles. Although the temperatures input were different, Albuquerque followed EPA guidance by using the most recent temperature data in the model. EPA guidance states that areas should use the three most recent years of data, during which the area was in attainment of the standard.

Albuquerque made an additional change in the projections that should be noted, but whose impact was marginal. Albuquerque changed the factor that converts annual vehicle miles traveled, to a winter season average. This factor is used to better estimate winter driving habits, compared to average driving habits year round. For additional information on this part, see the Technical Support Document.

(3) Area source

The maintenance plan adopted by Albuquerque and approved by the EPA projected that area sources would contribute 116.28 tpd in 1996, growing to a level of 131.98 tpd to the maintenance area in the year 2006. In the revised plan, the area's emissions were 67.19 tpd in 1996, that will grow to 76.09 tpd by 2006. Albuquerque reduced the emissions inventory figures for 1996 through a study of wood-burning practices in the maintenance area. The study was commissioned by Albuquerque and performed by a contractor. In that study, Albuquerque learned that carbon monoxide emissions from household wood burning had been overestimated in the original maintenance plan. The original plan used national ''typical use'' data for the amount of wood burned, to quantify CO emissions produced by household wood burning. By opting to conduct local research, Albuquerque was able to develop and use its own activity data, thereby predicting lower emissions.

The EPA generally encourages that areas perform research to determine the actual level of emissions, rather than rely on established ''default'' emission factors, where areas can afford to perform the research. After performing the study, Albuquerque had sufficient documentation to revise the inventory to an emission level that they believe more accurately reflects local conditions. Therefore, the EPA is approving a downward adjustment by 49.09 tpd. This revised estimate of area source emissions allowed revisions in the point and on-road mobile categories, without causing an increase in the overall level of emissions allowed in the budget.

4. Why are the emission inventory and budgets being revised?

Bernalillo County, Albuquerque, and the surrounding area, continue to grow rapidly. The Act mandates that CO areas redesignated to attainment must adopt plans that will keep air pollution levels below the health-based standard, especially during times of growth. The original projections adopted in the original maintenance plan underestimated the growth of on-road mobile emissions, and overestimated other emissions. The EPA must approve any change to the CO maintenance plan. Once approved, the MVEB in the CO maintenance plan is used for conformity purposes. For the most recent action on conformity in Albuquerque, *See* 64 *FR* 36786, July 8, 1999.

5. Under what authority does Albuquerque revise the plan?

The Act allows Albuquerque to change the approved MVEB in the maintenance plan, provided that the budget continues to provide for attainment. In the case of a maintenance plan, emissions must remain below the estimated emissions in the year the area attained the standard.

The rules under the Act allow budgets to be adjusted, provided that the total of emissions stay below the level that achieved attainment. The EPA approval of the maintenance plan established the MVEB for transportation conformity purposes, and the overall budget as a demonstration of continued attainment.

6. How is Albuquerque protecting air quality, if they are increasing the amount of mobile emissions allowed in the region?

Albuquerque is resetting the budget levels for mobile emissions, point source emissions, and area source emissions, but is not increasing the overall emissions allowed in the basin. Although on-road mobile source emissions (*i.e.*, vehicles) will now make up a greater share of the CO produced in the area, total CO emissions are lower than the original maintenance plan. The EPA's review of this revision finds that the new mobile source emissions budget, and the overall emissions budget, will keep the total emissions for the area at or below the attainment year inventory level.

Moreover, the total emissions level is below the level established in the original maintenance plan. In the plan adopted and approved in 1995, Albuquerque demonstrated that the region could maintain air quality with 390 tpd from all sources. The revision sets a new maintenance level at 366 tpd. This commits Albuquerque to maintaining area emissions below 366 tpd, down 24 tpd from the previous plan. This change is ultimately more protective of the standard, because Albuquerque's maintenance plan requires the Air Board to consider implementing the maintenance plan contingency measures if Albuquerque projects that emissions will reach 366 tpd. The continency measures include increasing the frequency of the vehicle inspection and maintenance program, or increasing the oxygenate content in gasoline sold during the winter (high CO) season. In the event that the periodic inventory demonstrated emissions have surpassed these revised levels, the Albuquerque Air Board could implement one or both contingency measures as a preventive measure to avoid nonattainment. In the event that monitored CO levels violated the standard, these contingency measures would be implemented without further action from the Air Board.

II. Final Action

The EPA is approving, by direct final action, Albuquerque's revision to the CO maintenance plan, part of the SIP for New Mexico. This revision was submitted to the EPA on February 9, 1999. The revision contains a revised attainment inventory of emissions from area, point, on-road mobile, and off-road mobile sources. It also contains the CO Motor Vehicle Emissions Budget in the maintenance plan for purposes of transportation conformity.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if we receive adverse comments. This rule will be effective February 18, 2000, without further notice unless we receive relevant adverse comments by January 19, 2000.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take affect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, ''Federalism,'' and E.O. 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and

timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.'' Thus, the requirements of section 6 of the E.O. do not apply to this rule.
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C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, because the Albuquerque maintenance plan does not affect Indian lands, or impose any requirements on tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5

U.S.C. 804(2). This rule will be effective February 18, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated November 26, 1999.

Carl E. Edlund,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. In § 52.1620(e) the first table is amended by adding an entry to the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/Effective date	EPA approval date	Explanation
*	*	*	*	*
Revision approving request for redesignation, vehicle I/M program, and required maintenance plan.	Albuquerque CO maintenance plan.	February 4, 1999	December 20, 1999 [FR 71027]	Revision to maintenance plan budgets.

[FR Doc. 99–32174 Filed 12–17–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN114–1a; FRL–6500–9]

Approval and Promulgation of Implementation Plan; Indiana Volatile Organic Compound Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 18, 1999, the State of Indiana submitted a State Implementation Plan (SIP) revision request concerning amendments to Indiana's automobile refinishing rules for Lake, Porter, Clark, and Floyd Counties, and new Volatile Organic Compound (VOC) control measures including Stage I gasoline vapor recovery and automobile refinishing spray-gun requirements for Vanderburgh County. This rulemaking action approves, using the direct final process, the Indiana SIP revision request.

DATES: This rule is effective on February 18, 2000, unless EPA receives adverse written comments by January 19, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

Table of Contents

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

I. What Is EPA Approving in This Rule?

We are approving amendments to Indiana's automobile refinishing rules for Lake, Porter, Clark, and Floyd Counties, and new rules for Stage I gasoline vapor recovery and automobile refinishing spray-gun requirements for Vanderburgh County. Our approval makes these rules part of the federally enforceable SIP.

II. Automobile Refinishing Amendments

What Are the Existing SIP Requirements for Automobile Refinishing?

326 Indiana Administrative Code (IAC) 8–10 provides VOC control requirements for facilities which refinish motor vehicles or mobile equipment in Lake, Porter, Clark, and Floyd Counties. The rule also regulates the suppliers of refinishing coatings to those facilities. EPA approved the rule

as a SIP revision on June 13, 1996 (61 FR 29965).

The rule contains VOC content limits for various refinishing coatings and surface preparation products. There are also several work practice requirements, including provisions for using certain coating application equipment, equipment cleaners, and waste storage containers. Refinishing facilities must also develop employee training programs for reducing emissions of VOC at the facility.

What Changes Did Indiana Make to the Automobile Refinishing Rule?

Indiana has amended the automobile refinishing rule in three areas:

(1) It has changed recordkeeping requirements to be less burdensome and more reflective of records currently being kept on solvent usage;

(2) It has created an exemption for facilities that refinish three or fewer motor vehicles per calendar year; and,

(3) It has removed the requirement that containers holding waste materials or solvent be gasket-sealed.

The Indiana rule, as originally adopted, required that refinishing facilities keep records of each job performed, and for each coating or surface preparation product, the identification of the product, the quantity used, the VOC content as supplied, and the quantity and VOC content of components added.

The originally adopted rule also required refinishing and surface preparation product manufacturers to keep records of, and provide the refinisher with, for each product supplied, the product identification, the manufacturer's mixing instructions for the product, and the VOC content as supplied and as applied after any thinning recommended by the manufacturer. The commercial providers of the products were required to keep records and provide the refinisher with the product identification, the amount supplied, and the VOC content as supplied and as applied after any thinning recommended by the manufacturer.

The amendments contained in the August 18, 1999, SIP submission change the rule to require that refinishing facilities keep coating records on a per-batch or per-job basis, and record the identification and VOC content of the coating as supplied or packaged, along with the quantity of coating used in making the mix or the mix ratio used, and the identification and quantity of components added or the mix ratio used. For surface preparation products, the refinishing facilities must keep monthly records of the identification, volume, and VOC content of products used.

Requirements for suppliers of refinishing or surface preparation products have also changed. Manufacturers and commercial providers must provide to the refinisher and keep a record of, for each product supplied, the product identification, the VOC content as packaged or as supplied, and the VOC content as applied in accordance with the manufacturer's mixing instructions. The rule specifies, for multi-stage systems, certain formats for indicating the as applied VOC content of coatings. These formats are consistent with the formats the industry typically uses in providing product information to the refinshers.

As noted above, the remaining amendments to the rule include an exemption for facilities that refinish three or fewer motor vehicles per calendar year, and a change to the work practice provisions of the rule regarding storage requirements for solvents and refinishing job waste. Under the amended rule, refinishing facilities no longer need to keep solvents and wastes in gasket-sealed containers, but facilities must still store solvents and wastes in closed containers.

Why Are the Changes Approvable?

Section 110(l) of the Act requires that any revisions to the SIP must not interfere with an area's attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress (as defined under section 171 of the Act), and any other requirement under the Act. Indiana's automobile refinishing rule has been credited as a control measure to reduce VOC emissions under Indiana's 15% Rate-Of-Progress (ROP) plans for Lake, Porter, Clark, and Floyd Counties (see 62 FR 38457, and 62 FR 24815). Indiana is also relying on the VOC emission reduction from this rule to attain the 1-hour ozone NAAQS in these counties. Therefore, to be approvable, the amendments to this rule must not lead to an increase in VOC that would affect either the 15% ROP plans, or attainment of the NAAQS.

On September 11, 1998, we promulgated a national rule establishing VOC limits for refinishing coatings sold nation-wide, beginning on January 11, 1999 (63 FR 48806). The federal rule covers the coating categories regulated under the State rule, and the limits are as stringent as, or tighter than, the limits specified in the State rule. The federal rule's requirements ensure that refinishing coatings, when applied after preparation according to the manufacturer's mixing instructions, are meeting the applicable VOC content limits in the Indiana rule.

The changes to the recordkeeping requirements of the automobile refinishing rule will not lead to an increase in VOC emissions, due to the impact of the national autobody coating rule. In addition, automobile refinishers must strictly follow the coating manufacturer mixing instructions. The refinishers are dependent on using these instructions to properly use computerized mixing equipment, to obtain customer satisfaction with the color match of the finished job, and to properly adhere to the conditions of the coating manufacturer's warranty. Therefore, refinishers will not increase the VOC content of coatings by adding solvents or other additives beyond the levels required by the manufacturer mixing instructions.

The change to monthly recordkeeping for surface coating preparation is acceptable because, unlike coatings, no thinning is involved with the application of surface preparation products which would increase the VOC content of the products beyond what is required under the rule. Therefore, no daily records of surface preparation products used and components added, as was required under the originally adopted rule, is necessary to ensure compliance with the rule's VOC content limits.

We expect no impact to the nonattainment areas' ozone concentrations or ROP plans due to the exemption for refinishing facilities which refinish three or fewer motor vehicles or mobile equipment per calendar year. Nearly all of the refinishers that have been covered since the adoption of the rule are not eligible for this limited exemption. We also expect no impact in VOC emissions from the removal of the gasket-sealed requirement for closed waste storage containers. We have no data showing gasket-sealed containers reduce VOC emissions any more effectively than by simply keeping containers closed.

In conclusion, because the amendments to Indiana's automobile refinishing rule will not lead to an increase in VOC emissions that would affect either the ROP plans, or the attainment of the ozone standard for Lake, Porter, Clark, and Floyd Counties, the amendments are approvable.

III. Vanderburgh County VOC Control Rules

Why Were VOC Control Rules Submitted for Vanderburgh County?

Interested citizens and businesses formed a group known as Action

Committee for Ozone Reduction Now (ACORN), to identify control measures which would reduce VOC emissions in Vanderburgh County, and ensure the county's maintenance of the NAAQS for ground-level ozone.

VOC is a precursor of ozone, an air pollutant which causes health problems because it damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants.

The Indiana Department of Environmental Management (IDEM) followed ACORN's recommendations in adopting control measures for Vanderburgh County and submitting the measures as a SIP revision.

What Control Measures do the Rules Require?

A. Stage I Gasoline Vapor Control

On September 4, 1987, EPA approved Indiana's regulations requiring that certain gasoline stations, and the tank trucks that transport gasoline to those stations, be equipped with what is referred to as Stage I vapor recovery systems (see 52 FR 33590). The regulations are codified under 326 IAC 8–4–6. Stage I requires that storage tanks at gas stations and transport trucks operate devices that capture gasoline vapors which would otherwise escape during the loading and unloading of fuel.

This SIP submission amends the applicability of the Stage I requirement to include all gasoline stations located in Vanderburgh County. Specifically, gasoline stations in Vanderburgh County must comply with the requirements under 326 IAC 8–4–6(a) through 6(c), and 6(h). Under these regulations, no owner or operator of a gasoline dispensing facility shall allow the transfer of gasoline between any transport and any storage tank unless such tank is equipped with the following:

(1) A submerged fill pipe;

(2) Either a pressure relief valve set to release at no less than 0.7 pounds per square inch or an orifice of 0.5 inch in diameter; and,

(3) A vapor balance system connected between the tank and the transport, which is operated according to the manufacturer's specifications.

If the owner or employees of a gasoline dispensing facility are not present during loading, it shall be the responsibility of the operator of the transport to make certain the vapor balance system is connected between the transport and the storage tank and the vapor balance system is operating according to the manufacturer's specifications.

B. Automobile Refinishing Spray-Gun Control

The submittal also amends the automobile refinishing rule, 326 IAC 8–10, to expand the applicability of the rule's coating applicator requirements to automobile refinishing facilities in Vanderburgh County. On and after May 1, 1999, facilities must use one or a combination of the following equipment for coating application:

(1) Electrostatic equipment;

(2) High-volume, low-pressure spray equipment;

(3) Any other coating application equipment that has been demonstrated, by the owner or operator, to IDEM to be capable of achieving at least 65% transfer efficiency.

The refinishing facility must also develop an employee training program on methods to reduce VOC at the facility, in accordance with the criteria for such a program as specified in the rule.

Why Are the Rules Approvable?

The rules included in the August 18, 1999, submittal expand the applicability to Vanderburgh County of rules that have already been approved by EPA. Because these rules strengthen the SIP, these rules are approvable.

IV. Rulemaking Action

In this rulemaking action, EPA approves the August 18, 1999, SIP revision request regarding automobile refinishing amendments for Lake, Porter, Clark, and Floyd Counties, and VOC control rules for Vanderburgh County. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by January 19, 2000. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 18, 2000.

V. Administrative Requirements.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Protection of the Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Dated: November 4, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraphs (c)(126) and (c)(127) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(126) On August 18, 1999, Indiana submitted amendments to the State's automobile refinishing rule for Lake, Porter, Clark, and Floyd Counties.

(i) Incorporation by reference.

326 Indiana Administrative Code 8–10: Automobile Refinishing, Section 1: Applicability, Section 5: Work practice standards, Section 6: Compliance procedures, Section 9: Recordkeeping and reporting. Adopted by the Indiana Air Pollution Control Board February 4, 1998. Filed with the Secretary of State July 14, 1998. Published at Indiana Register, Volume 21, Number 12, page 4518, September 1, 1998. Effective August 13, 1998.

(127) On August 18, 1999, Indiana submitted rules for controlling Volatile Organic Compound (VOC) emissions in Vanderburgh County. The rules contain control requirements for Stage I gasoline vapor recovery equipment, and a requirement for automobile refinishers to use special coating application equipment (automobile refinishing spray guns) to reduce VOC.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 8–4: Petroleum Sources, Section 1: Applicability, Subsection (c). Adopted by the Indiana Air Pollution Control Board November 4, 1998. Filed with the Secretary of State April 23, 1999. Published at Indiana Register, Volume 22, Number 9, June 1, 1999. Effective May 23, 1999.

(B) 326 Indiana Administrative Code 8–10: Automobile Refinishing, Section 1: Applicability, Section 3: Requirements. Adopted by the Indiana Air Pollution Control Board November 4, 1998. Filed with the Secretary of State April 23, 1999. Published at Indiana Register, Volume 22, Number 9, June 1, 1999. Effective May 23, 1999.

[FR Doc. 99–32371 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 090–1090; FRL–6508–4]

Approval and Promulgation of Implementation Plans and Part 70 Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving an amendment to the Missouri State Implementation Plan (SIP). EPA is approving revisions to Missouri rule 10 CSR 10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes. The effect of this action is to ensure Federal enforceability of the state's air program rule revisions and to maintain consistency between the state adopted rules and the approved SIP.

DATES: This rule will be effective on February 18, 2000, unless EPA receives adverse written comments by January 19, 2000. If adverse comment is received EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA.

This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this notice?

Have the requirements for approval of a SIP revision been met?

What action are we taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgations of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Document?

On April 5, 1999, and September 30, 1999, we received requests from Director of the Missouri Department of Natural Resources (MDNR) to amend the Missouri SIP. Both requests pertained to revisions of the Missouri air rule which regulates particulate emissions, 10 CSR

10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes.

In the first request, rule 10 CSR 10–3.050 was revised in two places. First, section (3) General Provisions, paragraph (B) was revised to change the word ''waste'' to ''fuel.'' The revised subparagraph now reads, ''Process weight means the total weight of all material introduced into a source operation including solid fuels, but excluding liquids and gases used solely as fuels and * * *.'' This change was made for clarification and to provide consistency with other language in the rule.

The second change was to section (5), Exemptions, paragraph (B)(4). This paragraph revised existing language pertaining to charcoal kilns to reference a recently adopted rule, 10 CSR 10–6.330, Restriction of Emissions From Batch-Type Charcoal Kilns, which established emission controls for charcoal kilns. This rule was approved as a SIP revision on December 8, 1998. Thus, this revision to rule 10–5.030 was an update for the purpose of clarification and consistency with rule 10–6.330.

In the second case, section (5), Exemption, paragraph (B), was amended to add new subparagraph 5. The subparagraph provides an exemption from the particulate matter emissions rule for smoke generating devices when a required permit or a written determination that a permit is not required has been issued or written. The revision has the effect of eliminating the need to issue variances for use of smoke generating devices. These devices are used for military training by the Fort Leonard Wood Smoke Training School.

Extensive air quality modeling was conducted by the MDNR, with assistance from EPA, to evaluate the impact of the use of smoke generators during training exercises at Fort Leonard Wood. The state provided a summary of the modeling results with its SIP request. Based on the modeling analysis, the smoke training at Fort Leonard Wood, if operated under the requirements listed in the prevention of significant deterioration permit, will not cause or contribute to a violation of the national ambient air quality standards. Because the exemption from the rule only applies where a source has met applicable permitting requirements, and the permitting requirements are designed to protect the NAAQS, EPA believes that the addition of the exemption will not adversely impact the NAAQS.

Additional background and technical information regarding the specific rule revisions are contained in the technical support document (TSD) prepared for this action, which is available from the EPA contact listed above.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Are We Taking?

We are processing this action as a direct final action because the revisions make changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Conclusion

EPA is approving an amendment to the Missouri SIP related to rule 10 CSR 10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes. Dates: This direct final rule is effective on February 18, 2000, without further notice, unless EPA receives adverse comment by January 19, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it approves provisions which implement a previously promulgated health or safety-based standard.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320 the entry in paragraph (c), table titled EPA-Approved Missouri Regulations, Missouri Citation 10–3.050 is revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) EPA-approved regulations.

Missouri Citation	Title	State Effective date	EPA approval date	Explanations
	Missouri Department of Natural Resources			
*	* * * * *	*	*	*
	Chapter 3—Air Pollution Control Regulations for the Outstate Missouri Area			
*	* * * * *	*	*	*
10–3.050	Restriction of Emission of Particulate Matter From Industrial Processes.	September 30, 1999	December 20, 1999 [FR 71037]	
*	* * * * *	*	*	*

[FR Doc. 99–32375 Filed 12–17–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 082–1082; FRL–6506–2]

Approval and Promulgation of Implementation Plans and State Operating Permits Programs; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing the final approval of the Missouri ''Definitions and Common Reference Tables'' rule and certain portions of the Missouri ''Operating Permits'' rule as revisions to the Missouri State Implementation Plan (SIP) and as revisions to the State operating permits program. These revisions clarify the Missouri rules, update the rules for consistency with Federal regulations and other state rules, and are consistent with EPA guidance.

EFFECTIVE DATE: This rule will be effective January 19, 2000.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. (913) 551–7975.

SUPPLEMENTARY INFORMATION:

Background

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52 entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

What is the Part 70 (Operating Permits) Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 (operating permits) program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter less than 10 microns in diameter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and EPA approval.

What are the Changes That EPA is Approving?

The revisions include changes to the definitions Rule 10 CSR 10–6.020 which: (1) Add a de minimis emission level for municipal solid waste landfills (any source which has emissions below this de minimis level is not required to obtain a new source permit), (2) remove caprolactam from the list of HAPs, and (3) revise the PM and PM_{10} definitions. These changes are all consistent with Federal regulations and EPA guidance.

The changes to the operating permits Rule 10 CSR 10–6.065 include revising the exemption for grain-handling facilities by including an exemption from Part 70 permitting requirements for country grain elevators. Also included are operating permit rule updates to make the exemptions consistent with the Missouri construction permits rule requirements, 10 CSR 10–6.060. For example, the sand and gravel operations exemption is revised to include

operations with a production rate of less than 17.5 tons per hour instead of 150,000 tons per year. These changes are consistent with EPA guidance and add consistency between the applicable rules which reduces confusion.

No comments were received in response to the public comment period regarding this rule action.

For more background information, the reader is referred to the proposal for this rulemaking published on April 6, 1999, at 64 FR 16659.

What Action is EPA Taking?

EPA is taking final action to approve, as an amendment to the SIP and the Part 70 program, the revisions to Missouri Rules 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' and 10 CSR 10–6.065, ''Operating Permits.'' These revisions clarify the Missouri rules, update the rules for consistency with Federal regulations and other state rules, and are consistent with EPA guidance.

EPA also notes that Sections (4)(A), (4)(B), and (4)(H) of Missouri Rule 10 CSR 10–6.065 are part of the basic operating permit program and are not part of the SIP or Part 70 program and will not be acted on in this rulemaking. Section (6) of Missouri Rule 10 CSR 10–6.065 is the Missouri Part 70 program and is not part of the SIP. The rationale for this action is described in more detail in the April 6, 1999, proposal.

Final Action

EPA is taking final action to approve, as an amendment to the Federally approved SIP and the Part 70 program, the revisions to Missouri Rules 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' and 10 CSR 10–6.065, ''Operating Permits,'' except Subsections (4)(A), (4)(B), and (4)(H) effective on April 30, 1998. Section (6) of Rule 10 CSR 10–6.065 contains provisions pertaining only to Missouri's Part 70 permit program, and therefore Section (6) is approved as a revision to Part 70 but not as a revision to the Missouri SIP.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 entitled ''Regulatory Planning and Review.''

B. Executive Order on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new Executive Order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, because it merely approves preexisting state requirements. The rule affects only one state, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves provisions which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, I

certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320, in paragraph (c), the following entries in the table under the heading for Chapter 6 are revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	* * *
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	* * *
010–6.020	Definitions and Common Reference Tables.	4/30/98	December 20, 1999. [FR 71037].	
*	*	*	*	* * *
10–6.065	Operating Permits	4/30/98	December 20, 1999. [FR 71037]	The state rule has Sections (4)(A), (4)(B), and (4)(H) which are part of the basic state operating permits and not approved into the SIP. Section (6) contains provisions pertaining only to Missouri's Part 70 program and is not approved as a revision to the SIP.
*	*	*	*	* * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (d) to the entry for Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

Missouri

* * * * *

(d) The Missouri Department of Natural Resources submitted on May 28, 1998, revisions to Missouri Rules 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' and 10 CSR 10–6.065, ''Operating Permits.'' Effective date was April 30, 1998.

* * * * *

[FR Doc. 99–31964 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0906–AA46

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions; Correction

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule; correction amendment.

SUMMARY: This document contains a correction to the final regulations which were published in the **Federal Register** on Tuesday, October 26, 1999 (64 FR 57740). These regulations established a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. An inadvertent error appeared in the text of the regulations concerning when the subject of a report, or a designated representative, may dispute the accuracy of the report. As a result, we are making a correction to 42 CFR 61.15(a) to assure the technical correctness of these regulations.

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on October 26, 1999 (64 FR 57740) that established a national health care fraud and abuse data collection program—the Healthcare Integrity and Protection Data Bank (HIPDB)—for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. The final rule established a new 45 CFR part 61 to implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB. In that final rule, an inadvertent error appeared in § 61.15 of the regulations and is now being corrected.

In § 61.15, addressing how to dispute the accuracy of HIPDB information, the regulatory language incorrectly indicated that the subject of a report, or his her or its designated representative, was limited to 60 calendar days from receipt of the report to dispute the report's accuracy. The intent of this correction is to clarify that the subject or designated representative may amend the report at any period in time. As indicated in the preamble of the final rule that outlined the procedures for obtaining access to a report, submitting a statement, filing a dispute and revising disputed information, the Secretary is exempting the HIPDB from the Department's Privacy Act regulation requirements (45 CFR part 5b) in order to establish a more comprehensive and generous notification, access and correction procedure. The inadvertent language did not appear in the preamble or in other provisions of the regulations text. To be consistent with the preamble and the regulatory provisions of the final rule, we are correcting an inadvertent error that appeared in § 61.15(a). In addition, we are also clarifying § 61.15(a) by making cross-reference to the access rights afforded the subject of a report as set forth in § 61.12(a)(3).

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

Accordingly, 45 CFR part 61 is corrected by making the following correcting amendment:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 1320a–7e.

2. Section 61.15 is amended by revising paragraph (a) to read as follows:

§ 61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.

(a) *Who may dispute the HIPDB information.* The HIPDB will routinely mail or transmit electronically to the subject a copy of the report filed in the HIPDB. In addition, as indicated in § 61.12(a)(3), the subject may also request a copy of such report. The subject of the report or a designated representative may dispute the accuracy of a report concerning himself, herself or itself as set forth in paragraph (b) of this section.

* * * * *

Dated: December 14, 1999.

Joel Schaer,

OIG Regulations Officer.

[FR Doc. 99–32792 Filed 12–17–99; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2687; MM Docket No. 98–194; RM–9360]

Radio Broadcasting Services; Jewett and Windham, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ridgefield Broadcasting Corporation, reallots Channel 250A from Jewett, NY, to Windham, NY, as the community's first local aural service, and modifies Station WAXK's construction permit to specify Windham as its community of license. See 63 FR 64941, November 24, 1998. Channel 250A can be allotted to Windham in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) northwest, at

coordinates 42–20–12 North Latitude and 74–16–19 West Longitude, which is the site specified in the station's outstanding construction permit.

DATES: Effective January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–194, adopted November 24, 1999, and released December 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Jewett, Channel 250A and adding Windham, Channel 250A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–32800 Filed 12–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; GN Docket No. 93–252; PP Docket No. 93–253; FCC 99–270]

Future Development of SMR Systems in the 800 MHz Frequency Band, Regulatory Treatment of Mobile Services, and Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Memorandum Opinion and Order on Reconsideration (MO&O), the Commission completes the implementation of a new licensing framework for the 800 MHz Specialized Mobile Radio service (SMR). Specifically, the Commission revises or clarifies its rules concerning: the channel plan for General Category channels, the modification of incumbent licensee systems, and the mandatory relocation of incumbent licensee systems from the upper 200 channels to the lower 230 channels. Additionally, the Commission retains its current construction and coverage requirements and clarifies its rules concerning co-channel interference protection, the definition of incumbent and the applicability of its partitioning and disaggregation rules to Private Mobile Radio Service (PMRS) licensees in the 800 MHz and 900 MHz SMR services. The Commission also reaffirms its conclusion that competitive bidding is an appropriate tool to resolve mutually exclusive license applications for the General Category and lower 80 channels of the 800 MHz SMR service. These modifications and clarifications strike an equitable balance between the competing interests of 800 MHz SMR licensees seeking to provide local service and those desiring to provide geographic area service. Further, the Commission's licensing framework will enhance the competitive potential of SMR services in the Commercial Mobile Radio Service (CMRS) marketplace.

DATES: Effective February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau: Donald Johnson or Scott Mackoul at (202) 418–7240; Auctions and Industry Analysis Division, Wireless Telecommunications Bureau: Gary D. Michaels at (202) 418–0660; Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion and Order on Reconsideration* in PR Docket No. 93–144; RM–8117, RM–8030, RM–8029; GN Docket No. 93–252; PP Docket No. 93–253 was adopted September 30, 1999 and released October 8, 1999. The document is available, in its entirety, (including the list of petitioners) for inspection and copying during normal business hours in the FCC Reference Center, (Room CY-A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. In addition, it is available on the Commission's website at http://www.fcc.gov/Bureaus/Wireless/Orders.

SYNOPSIS OF MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

I. Introduction

1. The major actions adopted in the Memorandum Opinion and Order are:

A. Service Rules for the Lower 230 Channels

- Determine to license the 150 General Category channels in six contiguous 25-channel blocks, thereby amending the Commission's previous decision to license these channels in three contiguous 50-channel blocks;
- Retain the ''substantial service'' standard as an alternative to meeting the applicable construction requirements for EA licensees in the lower 230 channels;

B. Rights and Obligations of EA Licensees in the Lower 230 Channels

- Clarify that the grandfathering provisions in § 90.693 of the Commission's rules, setting forth the parameters within which incumbent licensees can modify their systems, apply to both SMR and non-SMR licensees that obtained their licenses or filed applications on or before December 15, 1995;
- Clarify that an incumbent licensee on the lower 230 channels seeking to modify its system using its 18 dBμ interference contour may, in the absence of consent from affected incumbents, provide a statement from a certified frequency advisory committee that a modification will not cause interference to adjacent licensees;
- Specify the operating parameters that incumbent licensees will use to calculate their service area contours and interference contours;
- Conclude that incumbents may not expand their geographic licenses beyond the contours of their individual site licenses to include areas where the EA licensee is not able to operate;
- Clarify that an incumbent's geographic license area includes, in addition to external base stations that are in operation, any interior sites that are constructed within the applicable construction period;
- Clarify that even when an incumbent licensee has expanded its operation throughout its 18 dBμ contour, its interference protection continues to extend only to its 36 dBμV/m signal strength contour;
- Affirm that the lower 80 SMR channels will not be redesignated for non-SMR use;

• Clarify that the construction requirements in Section 90.685(b) of the Commission's rules are applicable to all EA licensees on the lower 230 channels without distinction between CMRS and PMRS licensees;

• Clarify that EA licensees on the lower 80 SMR channels and General Category channels may switch between CMRS and PMRS services, provided that channels designated exclusively for SMR use continue to be used only for SMR service;

C. Relocation of Incumbents from the Upper 200 Channels

• Clarify that, for the purpose of determining what facility an EA licensee is responsible for relocating, an incumbent licensee's ''system'' includes mobile units and a redundant system when necessary to effect a transparent relocation;

• Affirm that the Commission's definition of ''system'' does not include managed systems that are comprised of individual licenses;

• Determine that an EA licensee that relocates an incumbent to a system with a comparable channel capacity, but a different channel configuration, is required to reimburse the incumbent for the increased cost inherent in operating such a system;

• Retain the five-year cost recovery period for increased operating costs caused by incumbent licensee relocation;

• Affirm that reimbursement of relocation costs will not be due until the incumbent has been fully relocated and the frequencies are free and clear;

• Decline to revise the time period for relocation negotiations between EA licensees and incumbent licensees;

• Determine that EA licensees are not required to compensate end users for service interruptions caused by realignment and returning to new frequencies;

D. Partitioning and Disaggregation for 800 MHz and 900 MHz Licensees

• Clarify that the Commission's geographic partitioning and spectrum disaggregation rules apply to PMRS licensees in the 800 MHz and 900 MHz SMR services;

E. Competitive Bidding Issues

• Affirm the Commission's previous determination that the General Category channels and lower 80 SMR channels of the 800 MHz SMR band are auctionable under Section 309(j) of the Communications Act.

• Clarify that the auction exemption for public safety radio services in Section 309(j)(2) of the Communications Act does not apply to spectrum that has been allocated for SMR use and which the Commission has already determined to be auctionable;

• Affirm that licensing in the lower 230 channels will be open to all parties;

• Amend the method by which licenses in the lower 230 channels will be grouped for auction, and direct the Wireless Telecommunications Bureau, pursuant to delegated authority, to determine what licensing groups, if any, should be established for auctioning the lower 230 channels;

• Affirm that a bidder's upfront payment will be based on the number of licenses on which a bidder anticipates bidding in any round;

• Affirm that the Commission will not offer installment payment financing for licenses in the lower 230 channels;

• Affirm that the Commission will not adopt gender-or minority-based provisions for auctioning licenses for the lower 230 channels at this time.

II. Background

2. The Commission initially established the 800 MHz SMR services to license dispatch radio systems on a site-by-site basis in local markets. In recent years, however, a number of SMR licensees have expanded the geographic scope of their services, aggregated channels, and developed digital networks to enable them to provide a type of service comparable to that provided by cellular and Personal Communications Service (PCS) operators. In response to these developments, the Commission has re-evaluated its site-by-site licensing procedures, which were cumbersome for systems comprised of several hundred sites, because licensees were required to obtain Commission approval for each site. This re-examination has stemmed from a concern that site-by-site licensing procedures impair an SMR licensee's ability to respond to changing market conditions and consumer demand.

3. In the *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (800 MHz First Report and Order),* 61 FR 6212 (February 16, 1996) the Commission restructured the licensing framework that governs the 800 MHz SMR service. For the upper 200 channels, the Commission replaced site- and frequency-specific licensing with a geography-based system similar to those used in other Commercial Mobile Radio Services (''CMRS''). The Commission designated the upper 200 channels of 800 MHz SMR spectrum for geographic licensing, and created 120-, 60-and 20-channel blocks within the U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (''EAs''). The Commission concluded that mutually exclusive applications for these licenses would be awarded through competitive bidding. Additionally, the Commission granted EA licensees the right to relocate incumbent licensees out of the upper 200 channels to comparable facilities. Finally, the Commission reallocated the 150 contiguous 800 MHz General Category channels for exclusive SMR use.

4. In the *800 MHz Second Report and Order,* 62 FR 41190 (July 31, 1997) the Commission established EAs as the licensing area for the lower 230 800 MHz channels, which include the lower 80 SMR channels and the 150 General Category channels. The Commission established competitive bidding rules for resolving mutually exclusive applications for EA licenses in the lower 230 channels, determined that incumbents on the lower 230 channels would not be subject to mandatory relocation, and defined the rights of incumbent licensees on those channels. The Commission also provided further details concerning the mandatory relocation rules for the upper 200 channel block and established partitioning and disaggregation rules for 800 MHz and 900 MHz SMR licensees.

5. In response to the *800 MHz Second Report and Order,* the Commission received a number of pleadings requesting reconsideration, modification or clarification of its rules relating to mandatory relocation, co-channel interference, spectrum block size, geographic area licensing, and partitioning and disaggregation.

III. Discussion

A. Service Rules for the Lower 230 Channels

i. Channel Blocks

6. *Background.* In the *800 MHz Second Report and Order,* the Commission adopted channel blocks for licensing the lower 80 SMR channels and the 150 General Category channels. Specifically, the Commission determined to license the lower 80 SMR channels in sixteen non-contiguous 5-channel blocks. The Commission reasoned that the non-contiguous nature of these channels made it impractical to impose any other channel plan. The Commission, further concluded that this approach would provide opportunities for incumbents and applicants that base their systems on trunking of non-contiguous channels to acquire spectrum and was, therefore, consistent with the mandate of Section 309(j)(4)(C)

of the Communications Act of 1934 to promote an equitable distribution of licenses and provide economic opportunities for a wide variety of entities. Finally, the Commission determined that this channel plan was the least disruptive geographic licensing method for smaller incumbent licensees that had acquired their channels in 5-channel increments.

7. The Commission decided to license the 150 General Category channels in three contiguous 50-channel blocks. Initially, in the *Second Further Notice*, the Commission proposed three alternative block sizes for licensing these channels: (a) a 120-channel block, a 20-channel block, and a 10-channel block; (b) six 25-channel blocks; or (c) fifteen 10-channel blocks. In response, commenters suggested various other options for channel allotment such as 5-channel blocks or licensing all 150 channels individually. While the Commission considered all of the proposed plans, the Commission ultimately adopted, in part, the Industry Proposal plan for licensing channels in three contiguous 50-channel blocks. The Commission rejected that portion of the Industry Proposal channel plan that would have permitted incumbent licensees to enter into settlement agreements for the distribution of unlicensed spectrum on a channel-by-channel basis prior to auction. The Commission believed that licensing the General Category channels in three contiguous 50-channel blocks, without permitting pre-auction settlements, struck the appropriate balance between the needs of some licensees for large contiguous blocks of spectrum and those of other licensees for smaller spectrum blocks.

8. *Discussion.* On reconsideration, the Commission concludes that auctioning the 150 General Category channels in six contiguous 25-channel blocks, rather than three contiguous 50-channel blocks, will best serve the interests of licensees with different spectrum allocation needs. Currently, the General Category frequencies are occupied by a wide variety of entities, including public safety, SMR, business, and industrial/land transportation users. Each of these entities has different spectrum allocation needs based on the services they provide and their technological capabilities. While some licensees use contiguous spectrum technologies and therefore need large blocks of spectrum, other licensees (*i.e.,* small businesses) trunk small numbers of non-contiguous channels and thus seek smaller amounts of spectrum. The Commission believes that licensing General Category channels in blocks of 25 will achieve its goal of providing a wide variety of entities a meaningful opportunity to pursue spectrum in this band.

9. A significant portion of incumbent licensees on the General Category frequencies are small businesses and are licensed for only a few channels in the band. Auctioning licenses for General Category channels in smaller channel blocks will provide these small business incumbents with greater opportunities to take advantage of geographic area licensing. In addition, it will encourage new entrant participation in the provision of 800 MHz services. As the Commission explained in the *800 MHz Second Report and Order*, auctioning the General Category channels in large channel blocks could preclude small businesses and new entrants with limited financial resources from acquiring licenses because, generally, bigger blocks of spectrum require larger bids. Smaller channel blocks, on the other hand, are less likely to be cost prohibitive. Changing the block size from 50 channels to 25 channels will provide small entities with the opportunity to acquire smaller amounts of spectrum consistent with their financial means and technological needs. By facilitating small business and new entrant participation in the provision of 800 MHz services, this channel plan fulfills the Commission's statutory mandate of promoting economic opportunity for a wide variety of applicants and avoiding an excessive concentration of licenses.

10. The Commission declines to license General Category channels on an individual basis. First, auctioning these channels on an individual basis would be administratively burdensome given the large number of channels involved. Second, this method of licensing is inconsistent with the needs of applicants that receive blocks of contiguous spectrum. Further, blocks of contiguous spectrum allow for more flexibility in terms of technological applications and innovation.

ii. Construction and Coverage Requirements

11. *Background.* In the *800 MHz First Report and Order*, the Commission required EA licensees on the upper 200 channels to construct their systems within five years of licensing. The Commission imposed interim coverage requirements, requiring EA licensees to provide coverage to one-third of the population within the EA within three years of initial license grant and to two-thirds of the population by the end of the five-year construction period. In addition, the Commission required EA licensees to use at least 50 percent of the channels in their spectrum blocks in at least one location within the EA within three years of the initial license grant.

12. In the *800 MHz Second Report and Order*, the Commission adopted construction requirements for the lower 230 channels. Specifically, the Commission required that EA licensees in these channel blocks provide coverage to one-third of the population within three years of the initial license grant and to two-thirds of the population within five years of the license grant. Unlike their counterparts in the upper 200 channels, however, the Commission stated that EA licensees in the lower 230 channels could, in the alternative, provide ''substantial service'' to their geographic license area within five years of license grant. The Commission defined ''substantial service'' as ''service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal.'' The Commission stated that a licensee could satisfy the substantial service requirement by demonstrating that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas. The Commission did not adopt a channel usage requirement for licensees in the lower 230, channel block. The Commission made clear that failure to meet these construction requirements would result in automatic termination of the geographic area license.

13. *Discussion.* The substantial service option is necessary to provide opportunities for new entrants to compete with incumbents in the lower 230-channel block. In some EAs, an incumbent licensee may already serve a large portion of the population. A new entrant, therefore, may not be able to satisfy the population coverage requirement because its service area cannot overlap with that of the incumbent's. The option of providing a showing of substantial service allows potential EA licensees that cannot meet the three-year and five-year coverage requirements, because of the existence of incumbent co-channel licensees, to satisfy a construction requirement. Allowing licensees to make substantial service showings also encourages build-out in rural areas since one of the ways in which a licensee may satisfy the substantial service requirement is to demonstrate that it is providing service to unserved or underserved areas, which are often rural areas.

B. Rights and Obligations of EA Licensees in the Lower 230 Channels

1. Treatment of Incumbents

a. Definition of Incumbent

14. *Background.* In the Commission's *800 MHz SMR Second Report and Order* the Commission declined to adopt a mandatory, relocation plan for incumbents on the lower 230 channels. The Commission concluded that incumbent licensees, on these frequencies should be allowed to continue to operate under their existing authorizations, and that geographic area licensees would be required to provide protection to all co-channel systems within their licensing areas. The Commission also adopted operating parameters for incumbents that would give them a reasonable opportunity to expand their systems.

15. *Discussion.* Section 90.693 sets forth, specific conditions under which ''grandfathered'' licensees can modify their systems. The Commission received a request to clarify § 90.393(a) of its rules. The term ''incumbent licensees,'' in § 90.693(a) of its rules, refers to both SMR and non-SMR licensees that obtained licenses or filed applications on or before December 15, 1995.

b. Expansion and Flexibility Rights of Lower Channel Incumbents

16. *Background.* In the *800 MHz Second Report and Order*, the Commission concluded that while geographic licensing is appropriate for the lower 230 channels, some additional flexibility is appropriate for incumbents on these channels to facilitate modifications and limited expansion of their systems. The Commission stated that it would allow incumbents on the lower 230 channels to make system modifications within their interference contours without prior Commission approval. Thus, an incumbent licensee that desires to make modifications to its existing system, such as adding new transmitters and altering its coverage area, will be able to do so with the concurrence of all affected incumbents, so long as such an incumbent does not expand the 18 dBμ interference contour of its system. Moreover, licensees who do not receive the consent of all incumbent affected licensees, will be able to make similar modifications within their 22 dBμ signal strength interference contour and licensees who do not desire to make modifications may continue to operate within their existing systems. The Commission emphasized that the revised interference standard protects incumbents only against EA licensees, not against other incumbents. As such, the protection that one incumbent must provide to another incumbent continues to be governed by § 90.621(b) of the Commission's rules. In the absence of consent of all affected incumbent licensees, incumbent licensees must locate their stations at least seventy miles from the facilities of any other incumbent or comply with the co-channel separation standards established in the Commission's short-spacing rules.

17. *Discussion.* The Commission concludes that incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. However, if that consent is withheld, the incumbent licensee may provide, in lieu of consent, a statement from a certified frequency coordinator that a modification will not cause interference to adjacent licensees.

18. Consistent with §§ 90.621(b)(4) and 90.621(b)(6) of the Commission's rules, it believes that the ''originally-licensed'' contour should be calculated using the maximum ERP and the actual HAAT along each radial. The short spacing table protects existing licensees at maximum power, and actual HAAT in the direction of the co-channel station. The Commission believes that these protection criteria will provide more flexibility to incumbent licensees and are consistent with § 90.693 of its rules.

c. Converting Site-Specific Licenses to Geographic Licenses

19. *Background.* In the *800 MHz Second Report and Order*, the Commission allowed incumbents on the lower 230 channels to combine their site-specific licenses into single geographic licenses to provide them with the same flexibility and reduced administrative burden that geographic licensing affords to EA licensees. Because the Commission adopted the 18 dBμ contour rather than the 22 dBμ contour, where the incumbent licensee has obtained the consent of all affected parties, as the benchmark for defining an incumbent licensee's protected service area, the Commission used the contiguous and overlapping 18 dBμ contours of the incumbent's previously authorized sites to define the scope of the incumbent's geographic license. The Commission stated that once the geographic license has been issued, incumbents will not be required to obtain prior Commission approval or provide subsequent notification to add or modify facilities that do not extend the licensee's 18 dBμ interference contour. Additionally, licensees that do not receive the consent of all affected parties may follow the same process utilizing their 22 dBμ signal strength contour, rather than the 18 dBμ contour.

20. *Discussion.* Petitioners contend that incumbents' geographic licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of the Commission's interference protection rules. The Commission declines to expand an incumbent's geographic license beyond the contours of its individual site licenses. The Commission finds that inclusion of areas that are outside of an incumbent's interference contours within the incumbent's geographic license would be contrary to its objective of prohibiting encroachment by incumbents on the geographic area licensee's operations. Additionally, the Commission clarifies that in defining the scope of an incumbent's geographic license area, the Commission includes external base stations that are already constructed and operational and interior sites that are constructed within the particular construction period applicable to the incumbent. Once the geographic license has been issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

2. Co-channel Interference Protection

21. *Background.* In the Commission's *800 MHz SMR Second Report and Order,* the Commission concluded that additional flexibility was needed for lower 230 channel incumbent licensees to facilitate modifications and limited expansion of their systems. The Commission determined that additional flexibility for the lower 230 channel incumbent licensee was appropriate because these channels were subject to an application freeze and geographic licensing of these channels would not occur until after the upper 200 channel auction was completed and upper 200 channel incumbent licensees were relocated to the lower channels.

22. Because the Commission adopted an 18 dBμV/m standard, which gives incumbent licensees greater flexibility to expand, the Commission adopted stricter interference protection criteria to ensure that EA licensees do not interfere with incumbents' operations. Specifically, the Commission further determined that incumbent licensees who currently utilize the 40 dBμ signal strength contour for their service area contour and 22 dBμ signal strength contour for their interference contour will be permitted to use their 18 dBμ

signal strength contour for their interference contour as long as they obtain the consent of all affected parties. In particular, EA licensees are required to either: locate their stations at least 173 km (107 miles) from the licensed coordinates of any incumbent licensee, or comply with co-channel separation standards based on a 36/18 dBμV/m standard, rather than the previously applicable 40/22 dBμV/m standard. EA licensees must ensure that the 18 dBμV/m signal strength contour of a proposed station does not encroach upon the 36 dBμV/m signal strength contour of an incumbent licensee's existing stations.

23. *Discussion.* The Commission clarifies that incumbent licensees on the lower 230 channels will be protected by EA licensees only on the basis of the 36/18 dBμV/m contour analysis of the incumbent's existing station, even if an incumbent licensee has expanded its operation throughout its 18 dBμV/m contour. An incumbent licensee's protection extends only to its 36 dBμV/m signal strength contour. The Commission further clarifies that where the co-channel separation requirements in § 90.621(b) of its rules have afforded certain licensees greater interference protection, those standards will continue to apply.

3. Regulatory Classification of EA Licensees on the Lower 230 Channels

24. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that the Commission would presumptively classify SMR winners of EA licenses on the lower 230 channels as CMRS providers, because the Commission anticipates that most applicants for these licenses will be SMR applicants who seek to provide interconnected service and thus meet the definition of CMRS. However, the Commission stated that it would allow SMR applicants and licensees to overcome this presumption by demonstrating that their service does not meet the CMRS definition. In the *800 MHz Memorandum Opinion and Order,* the Commission determined that both SMRs and non-SMRs would be eligible to obtain licenses for the 150 General Category channels. Thus, where an EA license is obtained by a non-SMR operator, the CMRS presumption is inapplicable. In the event that EA licenses are awarded to Public Safety, Industrial/Land Transportation or Business licensees, for example, such licensees will be classified as PMRS providers.

25. *Discussion.* The Commission declines to re-designate the lower 80 channels for non-SMR use, as well as for SMR use. The Commission designated the lower 80 SMR channels for use in SMR systems based on a significant increase in the number of applicants for 800 MHz trunked systems and private users seeking service from SMR operators. The Commission anticipates that SMR providers' demand for the lower 80 channels will be increased by geographic area licensing of the upper 200 channels and its mandatory relocation policy.

26. The Commission also clarifies that construction requirements in § 90.685(b) are applicable to all EA licensees in the lower 230 channels without distinction between those classified as CMRS and those classified as PMRS. In addition, the Commission clarifies that EA licensees in the lower 230 channels are permitted to switch between CMRS and PMRS service in these channels.

C. Relocation of Incumbents from the Upper 200 Channels

1. Relocation Negotiations

27. *Background.* In the *800 MHz First Report and Order,* the Commission established procedures for the mandatory relocation of incumbent licensees from the upper 200 to the lower 230 channels on the 800 MHz SMR band. The Commission established a three-phase process for the relocation of incumbents. Phase I comprises a one-year voluntary negotiation. If no agreement is reached in phase I, the EA licensee may initiate Phase II, a one-year mandatory negotiation period during which the parties are required to negotiate in ''good faith.'' If the parties still fail to reach an agreement, the EA licensee may then initiate Phase III, which is an involuntary relocation of the incumbent's system. The Commission determined that incumbents on the upper 200 channels would not be subject to mandatory relocation unless the EA licensee provided the incumbent with ''comparable facilities'' without any significant disruption in the incumbent's operations.

28. In the *800 MHz Second Report and Order,* the Commission defined comparable facilities as facilities that will provide the same level of service as the incumbent licensee's existing facilities, from the perspective of the end user. The Commission identified four factors relevant to this determination: system, capacity, quality of service and operating costs.

29. *Discussion.* In the *800 MHz Memorandum Opinion and Order on Reconsideration,* the Commission reduced the original two-year mandatory negotiation period to one year, concluding that a one-year voluntary and one year mandatory negotiation period would provide parties with the flexibility to negotiate voluntarily while ensuring that relocation occurs expeditiously. Accordingly, the Commission declines to further reduce the negotiation period. In addition, the Commission declines to establish a time period after which an incumbent would have the ability to terminate the relocation process if it does not reach agreement with the EA licensee. Allowing incumbents to terminate the relocation process after a certain period of time may encourage some incumbents to refrain from negotiating in good faith.

2. Comparable Facilities

a. System

30. In the *800 MHz Second Report and Order,* the Commission defined ''system'' functionally from the end user's point of view. A system is comprised of base station facilities that operate on an integrated basis to provide service to a common end user, and all mobile units associated with those base stations. A system can include multiple-licensed facilities that share a common switch or are otherwise operated as a unitary system, provided that an end user has the ability to access all such facilities. Although the Commission defined ''system'' broadly to provide incumbent licensees flexibility to continue meeting their customers' needs, the Commission specifically excluded from its definition facilities that are operationally separate and managed systems that are comprised of individual licenses.

31. *Discussion.* The Commission agrees with petitioners that its definition of ''system'' should include redundant mobile units and a redundant backbone, but only to the extent that they are necessary to effect a relocation that is transparent to the end user. The Commission declines to engage in specific detailed analysis of the various individual components that potentially could be included in a system. To determine whether a specific component is part of a system, EA licensees are required to look to the function of the component and consider whether the equipment in question is part of a unitary system providing service to the end user.

32. Furthermore, the Commission declines to expand its definition of ''system'' to include commonly managed systems that are comprised of individual licenses. To the extent that a manager operates separately licensed facilities as a unitary system, that could meet the Commission's definition of

''system,'' such operation would be likely to conflict with the licensees' obligation under Section 310(d) of the Communications Act to retain exclusive responsibility for the operation and control of authorized facilities. To the extent that such facilities are kept operationally separate, they are excluded from the Commission's definition of ''system.''

b. Capacity

33. *Background.* To comply with the Commission's capacity requirements, an EA licensee must provide an incumbent licensee with equivalent channel capacity. The Commission defined channel capacity as the same number of channels with the same bandwidth that is currently available to the end user. If a different channel configuration is used, it must have the same overall capacity as the original configuration. Accordingly, comparable channel capacity requires equivalent signaling capability, baud rate and access time.

34. *Discussion.* The Commission does not believe that retuning requires the exact channel spacing that the incumbent licensee had on the upper 200 channels. Because of the large number of incumbent licensees presently licensed on the lower 230 channels, the Commission believes that some relocated licensees will not receive the exact channel spacing that the relocated licensees had on the upper 200 channels. In these situations the EA licensee must configure the system in a way that does not compromise channel capacity and must reimburse the incumbent for the increased cost of operating the reconfigured system.

c. Operating Costs

i. Increased Operating Costs

35. *Background.* In the *800 MHz Second Report and Order,* the Commission defined operating costs as costs that affect the delivery of services to the end user. The Commission stated that if the EA licensee provides facilities that entail higher operating costs than the operating cost of the incumbent's previous system, and the cost increase is a direct result of the relocation of the system, the EA licensee must compensate the incumbent licensee for the difference.

36. *Discussion.* The Commission disagrees with one petitioner that contended that the Commission failed to provide for these increased costs. In the *800 MHz Second Report and Order,* the Commission explained that operating costs associated with the relocation might consist of either increased recurring costs associated with the replacement facilities or increased maintenance costs. Accordingly, if a higher power transmitter or larger antennas are necessitated by relocation, the incumbent should be compensated for any additional rental payments, increased utility fees, or increased maintenance costs associated with the new transmitter or antennas.

ii. Cost Recovery Period

37. *Background.* While the Commission concluded in the *800 MHz Second Report and Order* that EA licensees should be responsible for increased operating costs caused by relocation, it noted that identifying whether increased costs are attributable to relocation becomes more difficult over time. The Commission therefore determined not to impose this obligation indefinitely, but stated that the EA licensees' obligation to pay increased costs will end five years after relocation has occurred. The Commission concluded that a five-year payment period appropriately balances the interest of EA licensees and relocated incumbents.

38. *Discussion.* The Commission declines to lengthen the cost recovery period from a five to a ten-year period. A five-year period will facilitate the speedy resolution of relocation issues. The Commission believes the rationale the Commission provided in the *Microwave Relocation Cost Sharing First Report and Order,* 61 FR 29679 (June 12, 1996) is equally applicable to the relocation of SMR facilities. The five-year cost recovery period is not unfair to incumbent licensees because after five years many incumbents would have been forced to bear some of these costs themselves, even if they had not been relocated by the EA licensee. The Commission also notes that a five-year period provides incumbent licensees adequate time to budget, plan and allocate resources to meet these expenses upon the expiration of the cost recovery period.

39. In addition, the Commission declines to reduce the cost recovery period to three years. The Commission does not believe that costs incurred beyond a three-year period would be ''speculative and beyond the realm of [the] cost reimbursement parameters.'' The five-year period is not unfair to EA licensees and thus, the Commission declines to reduce the period to three years.

3. Other Payment Issues

a. Timing of Payments to Incumbents

40. *Background.* In the *800 MHz Second Report and Order,* the Commission stated that reimbursement payments for relocation are due (a) when the incumbent licensee has been fully relocated, and (b) the frequencies are free and clear.

41. *Discussion.* The Commission reiterates that payment of relocation costs will not be due until the incumbent has been fully relocated and the frequencies are free and clear. The Commission believes that this approach promotes a more expeditious relocation process by establishing a definite time at which reimbursement is due. However, the Commission notes that parties are free to negotiate when reimbursement of relocation costs will occur, and may agree to reimbursement as such expenses are incurred.

b. Compensable Costs

42. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that reimbursable relocation costs could include incumbent transaction expenses such as legal and consulting fees, configuration of antennas, increased rental space, and administrative costs. However, because the Commission wanted to encourage a fast relocation process free of disputes, it determined that the bulk of compensable costs should be tied as closely as possible to actual equipment costs. Therefore, the Commission required EA licensees to reimburse incumbents only for those transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the hard costs involved.

43. The Commission declines to require compensation to end users of incumbent licensee systems, because such compensation would be inconsistent with the Commission's determination that the bulk of compensable costs should be tied as closely as possible to the licensee's actual equipment costs.

D. Partitioning and Disaggregation for 800 MHz and 900 MHz Licensees

44. *Background.* In the *800 MHz Second Report and Order,* the Commission adopted flexible partitioning and disaggregation rules for all licensees in the 800 MHz and 900 MHz SMR service. Specifically, the Commission extended partitioning to all incumbent and EA licensees on both the upper 200 and lower 230 channels of the 800 MHz SMR service and to all incumbent and Major Trading Area (MTA) licensees on the 200 channels of the 900 MHz service. Similarly, the Commission concluded that all incumbent and EA licensees in the 800 MHz SMR service and all incumbent

and MTA licensees in the 900 MHz SMR service should be allowed to disaggregate portions of their spectrum.

45. *Discussion.* The Commission clarifies that in the *800 MHz Second Report and Order,* it determined that its partitioning and disaggregation rules should apply to all licensees in all SMR channel blocks with no distinction on the basis of licensee's regulatory classification as PMRS or CMRS. Application of the partitioning and disaggregation rules to PMRS licensees will result in more efficient use of the spectrum by allowing licensees to transfer part of their spectrum to a party that more highly values it.

E. Competitive Bidding Issues

1. Auctionability

46. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that competitive bidding is an appropriate licensing mechanism for the General Category and lower 80 channels of the 800 MHz SMR service. The Commission concluded that the 800 MHz SMR service satisfies the criteria set forth by Congress for determining when competitive bidding should be used. The Commission noted that under its rules a diverse group of applicants, including incumbent licensees and potential new providers of this service, will be able to participate in the auction process because eligibility for EA licenses will not be restricted. Finally, the Commission adopted special provisions for small businesses seeking EA licenses.

47. *Discussion.* The Commission reaffirms its conclusion that competitive bidding is the appropriate tool to resolve mutually exclusive license applications for the General Category and lower 80 channels of the 800 MHz SMR service. The Commission continues to believe that competitive bidding furthers the public interest by promoting rapid deployment of service, fostering competition, recovering a portion of the value of two spectrum for the public, and encouraging efficient spectrum use. The Commission has previously construed § 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of § 309(j)(3). In the course of this proceeding, the Commission has evaluated the appropriateness of various licensing mechanisms for the 800 MHz SMR service. No new arguments are raised that would persuade the Commission to reconsider the adoption of EA licensing for the 800 MHz SMR service. The Commission emphasizes that geographic area licensing offers a flexible, licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past. By determining that it would not be in the public interest to implement other licensing schemes or processes that avoid mutual exclusivity, the Commission has fulfilled its obligation under section 309(j)(6)(E).

48. Congress has exempted certain classes of licensees from the competitive bidding process in § 309(j)(2). The Commission previously determined that the public safety radio services exemption does not entitle individual users to remove licenses from auctions licensing simply by claiming a public safety use. Thus, contrary to petitioners' contentions, the exemption does not apply to spectrum that is allocated for SMR use and which has already been determined to be auctionable.

2. Eligibility

49. *Background.* In the *800 MHz Second Report and Order* and the *800 MHz Memorandum Opinion and Order* the Commission concluded that General Category and lower 80 channels would be licensed on a geographic basis and subject to competitive bidding to resolve mutually exclusive applications. Earlier, in the *800 MHz SMR First Report and Order,* the Commission concluded based on comments in the proceeding and on its licensing records that the primary demand for General Category channels came from SMR operators. When the Commission froze General Category licensing in 1995, the Commission noted that the number of SMR applications for these channels had risen markedly and, as such, the Commission believed that such activity is itself an indication that demand for the spectrum exists. Moreover, as a result of geographic area licensing on the upper 200 channels, there is a substantial demand for General Category channels among legitimate small SMR operators, including incumbents that relocate from the upper 200 channels.

50. *Discussion.* The Commission continues to believe that the lower 80 and General Category channels of the 800 MHz SMR service should be licensed through competitive bidding and open to all parties, as opposed to incumbents solely. The Commission has determined that it will maintain open eligibility and the requirement that incumbents participate in competitive bidding. The Commission believes that open eligibility will foster competition and result in a diverse group of 800 MHz SMR providers, and that the competitive bidding process will adequately deter speculation. These rules are consistent with the rules for other CMRS services, and encourage the participation of diverse provider that are serious enough to meet the requirements of the competitive bidding process.

51. The Commission does not believe that its approach will harm the interests of non-commercial licensees by requiring them to compete for spectrum with commercial systems. In the *800 MHz Second Report and Order,* the Commission noted there are several ways in which non-SMRs can benefit from its geographic licensing rules. For example, non-commercial operators may not only apply individually for geographic area licenses they may also participate in joint ventures (with other non-commercial operators or with commercial service providers) or obtain spectrum through partitioning and disaggregation to meet their spectrum needs. The Commission also expects that geographic area licensing of SMR and General Category spectrum will free up non-SMR spectrum in the 800 MHz band, providing more options for non-commercial operators where availability of General Category spectrum is limited. Finally, the Commission is continuing with its initiatives to provide sufficient spectrum for non-commercial operations through its *Reframing* proceeding.

52. The Commission emphasizes that non-SMR operators are eligible to hold licenses in the lower 80 SMR channels, however these channels continue to be designated for SMR use only. While the Commission concludes that non-SMR are eligible for licensing, it emphasizes that this in no way affects its decision to license General Category and lower 80 channels geographically, with mutually exclusive applications reserved through competitive bidding with open eligibility.

3. Competitive Bidding Design

a. License Grouping

53. *Background.* In the *800 MHz Second Report and Order,* the Commission stated that ''to expedite the process of auctioning the lower 80 and General Category EA licenses, it would auction these licenses using the five regional groups that were used for the regional narrowband Personal Communications Services (PCS) auction: Northeast, South, Midwest, Central, and West.''

54. *Discussion.* The Commission amends the method by which it will group licenses for auction. While the Commission continues to believe that licenses should be grouped for

competitive bidding purposes in a manner that will reduce the administrative burden on auction participants, particularly small businesses, the Commission will not use the five regional groups based on Basic Trading Areas that were used in the regional narrowband PCS auction. Instead, the Commission will direct the Bureau to determine, pursuant to its delegated authority, what groups, if any should be established for auctioning the lower 80 and General Category EA licenses. The Balanced Budget Act of 1997 provides that ''before the issuance of bidding rules,'' the Commission must provide adequate time for parties to comment on proposed auction procedures. It has been the Bureau's practice to issue a Public Notice seeking comment on auction-specific operational issues well in advance of the application deadline for each auction. The Commission therefore concludes that the Bureau, under its existing delegated authority and in accordance with the Balanced Budget Act of 1997, should seek further comment on license grouping and auction sequence, prior to the start of the 800 MHz auction.

b. Upfront Payments

55. *Background.* Currently, applicants have the option to check ''all markets'' on their short-form applications but submit an upfront payment to cover only those licenses on which they actually intend to bid in any one round. Permitting the selection of ''all markets'' gives bidders the flexibility to pursue back-up strategies in the event they are unable to obtain their first choice of licenses.

56. *Discussion.* The Commission has expressly rejected arguments made by those that oppose the use of an ''all markets'' box. A bidder must submit an upfront payment sufficient to meet the eligibility requirements for any combination of licenses on which it might wish to bid in a round. This rule forces bidders to make a payment that reflects their level of interest and protects against speculation. Moreover, the Commission continues to believe that bidders should have the flexibility to pursue back-up strategies if they are unable to obtain their first choice of licenses. As demonstrated by all recent auctions, providing bidders flexibility is crucial to an efficient auction and optimum license assignment. Therefore, the Commission will retain the current rules, which permit use of the ''all markets'' box and require an upfront-payment that corresponds to the number of licenses on which a bidder anticipates bidding in any one round.

c. Delegated Authority

57. *Background.* In the *800 MHz Second Report and Order,* the Commission delegated to the Bureau the authority to implement many of the Commission's rules pertaining to auctions procedures. This included the authority to conduct auctions; administer applications, payment, licenses, grant, and denial procedures; and determine upfront and down payment amounts.

58. *Discussion.* The Commission notes that § 0.131 of its rules gives delegated authority to the Bureau to implement all of the rules pertaining to auction *procedures.* The Commission concludes that the delegation of authority to the Bureau is valid as it concerns inherently procedural rather than substantive issues and is, therefore, in compliance with its rules. Furthermore, the Commission's delegation of authority is in compliance with the APA. Pursuant to 5 U.S.C. Section 553(b), an agency may modify procedural rules without notice and comment. Because the actions delegated to the Bureau are procedural in nature and do not affect the substantive rights of interested parties, the Commission's delegation of authority falls within that exception.

4. Treatment of Designated Entities

a. Installment Payments

59. *Background.* In the *800 MHz Second Report and Order,* the Commission deferred to its Part 1 proceeding the decision on whether to adopt installment payments in the lower 80 and General Category channels. The Commission determined in its *Part 1 Third Report and Order,* 63 FR 2315 (January 15, 1998), released in December of 1997, that installment payments should not be used in the immediate future as a means of financing small-business participation in its auction program.

60. *Discussion.* In the *Part 1 Third Report and Order,* the Commission considered its use of installment payment plans for future auctions. On the basis of the record in that proceeding and the record developed on installment payment financing for the broadband PCS C block service and on recent decisions eliminating installment payment financing for LMDS and 800 MHz SMR (upper 200 channels), the Commission concluded that, until further notice, the Commission should no longer offer such plans as a means of financing small businesses and other designated entities seeking spectrum licenses. The Commission notes that this conclusion was subject to its request for comment in the Second Further Notice of Proposed Rulemaking portion of the *Part 1 Third Report and Order* on installment payment issues and means other than bidding credits and installment payments by which the Commission might facilitate the participation of small businesses in its spectrum auction program.

61. The Commission believes that the public interest is best served by going forward with the auction of the lower 80 and General Category channels without extending installment payments to licensees. In place of installment payments, the Commission established larger bidding credits to provide for the interests of small business bidders. The Commission believes that its adoption of the larger bidding credit both fulfills the mandate of Section 309(j) to provide small businesses with the opportunity to participate in auctions and ensure that new services are offered to the public without delay.

b. Designated Entity Provisions

62. *Background.* In the *800 MHz Second Report and Order,* the Commission sought comment on the type of designated entity provisions that should be incorporated into its competitive bidding procedures for the lower 80 and General Category channels. The Commission requested comment on the possibility that, in addition to small business provisions, separate provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels. In the *800 MHz Second Report and Order,* the Commission determined that it had not developed a record sufficient to sustain gender- and minority-based measures in the lower 80 and General Category licenses based on the standard established by the *Adarand* decision. Additionally, the Commission noted the record was insufficient to support any gender-based provisions under the intermediate scrutiny standard established in the *VMI* decision. Based upon the record in that proceeding, the Commission adopted bidding credits solely for applicants qualifying as small businesses. The Commission believed these provisions would provide small businesses with a meaningful opportunity to obtain licenses for the lower 80 and General Category channels. Moreover, many women- and minority-owned entities are small businesses and will therefore qualify for these provisions. As such, these provisions met Congress' goal of promoting wide dissemination of licenses in this spectrum.

63. *Discussion.* In light of the Supreme Court's recent decisions, the

Commission considered its statutory obligations to (1) award spectrum licenses expeditiously and to promote the rapid deployment of new services to the public without judicial delays, and (2) disseminate licenses among a wide variety of applicants, including designated entities. The designated entity bidding credits adopted for the 800 MHz service are gender- and minority-neutral but specifically target small businesses. Auction results indicate that many of the small businesses participating in auctions are also women- and minority-owned, therefore effectively furthering Congress' objective of disseminating licenses among a wide variety of applicants.

V. Conclusion

64. The Commission believes that the revisions and clarifications of its rules adopted in this *Memorandum Opinion and Order on Reconsideration* are necessary to finalize its implementation of a new licensing framework for SMR systems that strikes a fair and equitable balance between the competing interests of 800 MHz SMR licensees who seek to provide local service and those desiring to provide geographic area service. The Commission further believes that the revisions and clarifications of its rules will facilitate the rapid implementation of wide-area licensing in the SMR service and advance the public interest by fostering the economic growth of competitive new services.

VI. Procedural Matters

A. Regulatory Flexibility Act

65. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the changes in its rules adopted in this *Memorandum Opinion and Order on Reconsideration.* The Office of Public Affairs, Reference Operations Division, will send a copy of the *Memorandum Opinion and Order on Reconsideration,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

B. Paperwork Reduction Act of 1995 Analysis

66. This *Memorandum Opinion and Order on Reconsideration* contains a modified information collection that the Commission is submitting to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

VII. Supplemental Final Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking (Second Further Notice)* in this proceeding. The Commission sought written public comment on the proposals in the Second Further Notice, including the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix D of the subsequent *Second Report and Order* in this proceeding. The Commission received eight petitions for reconsideration in response to the *800 MHz Second Report and Order.* The *Memorandum Opinion and Order on Reconsideration* addresses those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *800 MHz Second Report and Order* and addressed in this *Memorandum Opinion and Order on Reconsideration.* This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.

A. Need for and Purpose of this Action

68. In the *800 MHz Second Report and Order,* the Commission established a flexible regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service to promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The rules adopted, in the *800 MHz Second Report and Order,* also implement Congress' goal of regulatory symmetry in the regulation of competing commercial mobile radio services (CMRS) as described in Sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993. In the *Second Report and Order,* the Commission also adopted rules regarding competitive bidding for the remaining 800 MHz SMR spectrum based on Section 309(j) of the Communications Act, 47 U.S.C. 309(j), which authorizes the Commission to use auctions to select among mutually exclusive initial applications in certain services, including the 800 MHz SMR service. The actions taken in this *Memorandum Opinion and Order on Reconsideration* are in response to petitions for reconsideration or clarification of the *800 MHz Second Report and Order.* Throughout this proceeding, the Commission has sought to promote Congress' goal of regulatory parity for all commercial mobile radio services, and to encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, the Commission has sought to establish rules for the SMR services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

B. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis

69. No reconsideration petitions were submitted in response to the FRFA. However, small business-related issues were raised indirectly by some parties filing petitions for reconsideration of the *800 MHz Second Report and Order.* Several petitions concerned the potential impact of some of the Commission's proposals on small entities, especially on certain incumbent 800 MHz SMR licensees. In Section E, *infra,* the Commission describes its actions taken in response to petitions that raised small entity-related issues, as well as significant alternatives considered.

70. In the *800 MHz Second Report and Order,* the Commission adopted geographic area licensing for the lower 230 800 MHz SMR channels in order to facilitate the evolution of larger 800 MHz SMR systems covering wider areas and offering commercial services to rival other wireless telephony services. Some petitioners that were not SMR licensees opposed this plan arguing that it was unsuitable to the needs of smaller, private systems, which do not seek to cover large geographic areas in the manner of commercial service providers.

71. In the *800 MHz Second Report and Order,* the Commission adopted a portion of a proposal set forth by a number of incumbent 800 MHz SMR licensees (''Industry Proposal'') and allotted three contiguous 50-channel blocks from the former General Category block of channels. Some petitioners argued that auctioning such large contiguous blocks would not suit the needs of smaller SMR and non-SMR systems, which typically trunk smaller numbers of non-contiguous channels. These petitioners argued that large blocks of contiguous channels could be

prohibitively expensive to bid for at auction, thereby limiting the opportunities for smaller operators to take advantage of geographic area licensing. One petitioner argued that the 150 General Category Channels should be auctioned on a single-channel basis.

72. In the *800 MHz Second Report and Order,* the Commission adopted construction requirements for the lower 230 channels requiring EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license grant. However, as an alternative to meeting applicable construction requirements, the Commission allowed EA licensees in the lower 230 channels to provide ''substantial service'' to their geographic license area within five years of license grant. The Commission found that more flexible construction requirements enhance rapid deployment of new technologies and services and will expedite service to rural areas. The Commission stated that a licensee could satisfy the substantial service requirement by demonstrating that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas. Two petitioners argued that the Commission should eliminate the substantial service test and impose specific channel usage requirements.

73. In the *800 MHz Second Report and Order,* the Commission concluded that competitive bidding is an appropriate licensing mechanism for the Lower 80 channels and the General Category channels. Several petitioners request that the Commission use procedures other than competitive bidding to license the 800 MHz SMR service. In essence, petitioners contend that this band does not fit within the Congressional criteria for auctions because the General Category and lower 80 channels of the 800 MHz SMR band do not meet the original statutory criteria governing auctionability contained in Section 309(j) of the Communications Act, or the criteria as amended by the enactment of the Balanced Budget Act of 1997. Several petitioners contend that Section 309(j)(6)(E) of the Communications Act prohibits the Commission from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity.

74. Several petitioners contend that the Commission should limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents. PCIA, for example, believes that the Commission should limit eligibility for geographic area licenses to those incumbent licensees who provide coverage to 70 percent of their market areas. It further argues that the rules adopted in the *800 MHz Second Report and Order* will encourage the filing of applications for anti-competitive or speculative purposes, which may result in high license costs and degradation of service to the public.

75. Two petitioners contended that the Commission should retain installment payments for the lower 80 and General Category 800 MHz SMR licenses on the grounds that installment payments are the most significant option for the provision of meaningful small business participation in the spectrum auctions as they allow SMR operators to pay for the license out of the profits generated through the provision of SMR service. In the *Part 1 Third Report and Order,* released in December of 1997, the Commission subsequently determined that installment payments should not be used in the immediate future as a means of financing small-business participation in the auction program.

76. Finally, one petitioner argued that, in addition to small business provisions, separate bidding credit provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels.

C. Description and Number of Small Entities to Which the Rules Will Apply

77. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the Commission's rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimate that 81,600 (91 percent) are small entities.

78. The rules adopted in the *Memorandum Opinion and Order on Reconsideration* will affect all small entities that hold or seek to acquire 800 MHz SMR licenses. Under these rules, Economic Area (EA) licenses will be granted on a market area basis, instead of site-by-site and mutually exclusive applications will be resolved through competitive bidding procedures. As noted, a FRFA was incorporated into the *800 MHz Second Report and Order*. In that analysis, the Commission described the small entities that might be significantly affected at that time by the rules adopted in the *800 MHz Second Report and Order*. Those entities include existing, 800 MHz SMR operators and new entrants into the 800 MHz SMR market. To ensure the more meaningful participation of small business entities in the auction for geographic area 800 MHz SMR licenses, the Commission, adopted a two-tiered definition of small businesses in the *800 MHz Second Report and Order.* A very small business will be defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business will be defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Small Business Administration (SBA) has approved these definitions for the lower 80 SMR channels and General Category channels.

79. Based on the revised channelization plan adopted in the *Memorandum Opinion and Order on Reconsideration,* the Commission anticipates that a total of 3,850 EA licenses will be auctioned in the lower 230 channels of the 800 MHz SMR service. This figured is derived by multiplying the total number of EAs (175) by the number of channel blocks (22) in the lower 230 channels. No party submitting or commenting on the petitions for reconsideration giving rise to this *Memorandum Opinion and Order on Reconsideration* commented on the potential number of small entities that might participate in the auction of the lower 230 channels and no reasonable estimate can be made.

80. The Commission does not know how many 800 MHz SMR service providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In the auction of the upper 200 channels of the 800 MHz SMR service, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small businesses. There is no basis to determine, of the 3,850 geographic area licenses to be auctioned in the lower 230 channels, the number of licenses that will be awarded to small or very small businesses.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

81. With one exception, this *Memorandum Opinion and Order on Reconsideration* does not impose any additional recordkeeping or other compliance requirements beyond the requirements contained in the *800 MHz Second Report and Order*. Incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent.

E. Steps Taken to Minimize Any Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

82. In awarding geographic area 800 MHz licenses in the lower 230 channels, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. In order to ensure the more meaningful participation of small business entities in the 800 MHz auctions, the Commission has adopted a two-tier definition of small businesses. This approach will give qualifying small businesses bidding flexibility. Small businesses will receive a 25 percent bidding credit and very small businesses will receive a 35 percent bidding credit.

83. A number of petitioners requested that the Commission reconsider its decision to license the 150 General Category channels in three contiguous 50-channel blocks. These petitioners generally supported the licensing of smaller channel blocks as a means of enabling small businesses and new entrants to acquire spectrum in the 800 MHz SMR service. Recognizing these concerns, the Commission has determined that the General Category channels will be licensed in six contiguous 25-channel blocks, rather than three contiguous 50-channel blocks. A significant portion of incumbent licensees on the General Category frequencies are small businesses and are licensed for only a few channels in the band. Auctioning licenses for General Category Channels in smaller channel blocks will provide these small business incumbents with greater opportunities to take advantage of geographic area licensing. In addition, it will encourage new entrant participation in the provision of 800 MHz services. Changing the block size from 50 channels to 25 channels will provide small entities with the opportunity to acquire smaller amounts of spectrum consistent with their financial means and technological needs. By further facilitating small business and new entrant participation in the provision of 800 MHz services, this channel plan fulfills the Commission's statutory mandate of promoting economic opportunity for a wide variety of applicants and avoiding an excessive concentration of licenses. At the same time, licensing in 25-channel blocks will allow entities desiring large contiguous blocks of spectrum to pursue such spectrum in the General Category.

84. In concluding that licensing the General Category channels in blocks of 25 strikes a better balance between the competing needs of different licensees, the Commission also rejected one petitioner's proposal to license channels on an individual basis. The Commission does not believe the public interest would be served by licensing on a channel-by-channel basis, because this method of licensing would be administratively burdensome given the large number of channels involved. Single channel licensing would also be inconsistent with the needs of applicants that require blocks of contiguous spectrum and would not foster the kind of technological advancements that would allow SMR licensees, which typically operate multichannel systems, to compete with other CMRS licensees.

85. In the *800 MHZ Second Report and Order*, the Commission adopted construction requirements for the lower 230 channels that required EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license grant. However, as an alternative to those construction requirements, the Commission stated that EA licensees in the lower 230 channels could provide ''substantial service'' to their geographic license area within five years of license grant. One petitioner asked the Commission to eliminate the substantial service test and require that construction standards be met on a ''per channel'' basis. The Commission has rejected the petitioner's request because the Commission believes that maintaining the substantial service option as an alternative to meeting applicable construction requirements will facilitate build-out in rural areas, encourage licensees to provide new service, and enable new entrants to satisfy the Commission's coverage requirements in geographic areas where incumbents are already substantially built out. The Commission believes that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the ''substantial service'' option should benefit small businesses. Giving licensees flexibility to satisfy the ''substantial service'' option in different ways should benefit small businesses.

86. In the *Second Report and Order,* the Commission concluded that incumbent licensees may add or modify sites within their existing 22 dBμ interference contours without prior Commission approval, and may use their 18 dBμ interference contour as the basis for modifying or expanding their systems provided that they obtain the consent of all co-channel incumbents potentially affected by the use of this standard. Three petitioners suggested that the Commission clarify that an incumbent licensee on the lower 230 channels seeking to modify its system using its 18 dBμ interference contour may, in the absence of consent from affected incumbents, provide a statement from a certified frequency advisory committee that a modification will not cause interference to adjacent licensees. In response to this request the Commission clarified that incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur together with proof that the incumbent licensee has sought consent. Adopting this alternative will provide a balance between incumbent licensee flexibility and incumbent licensee

protection, including small business incumbent licensees. This alternative reduces unnecessary regulatory burdens on licensees and administrative costs on the industry, and thereby benefits consumers.

87. Two petitioners contended that incumbents' geographic licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of the Commission's interference rules. The Commission considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to its objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses may participate in the auction of geographic area licenses or seek partitioning agreements with geographic area licensees.

88. A number of petitioners have requested that the Commission reconsider its decision to grant mutually exclusive applications for geographic area licenses in the lower 230 channels through competitive bidding. Balancing various interests, the Commission has affirmed the use of competitive bidding to grant mutually exclusive 800 MHz SMR licenses. The Commission also reaffirms its conclusion in the *800 MHz Second Report and Order* that mutually exclusive applications for the lower 230 channels are auctionable under the Commission's auction authority, as amended by the Balanced Budget Act of 1997. Under the Commission's rules, incumbent licensees and potential new providers of this service, including small businesses, will be able to participate in the auction process because the Commission has decided not to restrict eligibility for EA licenses.

89. Some petitioners contend that the administrative procedures associated with assigning geographic area licenses through auctions are not as efficient as site-specific licensing. The Commission disagrees with those petitioners and reiterates the advantages to both the Commission and licensees of geographic area licensing. The Commission again emphasizes that geographic area licensing offers a flexible, licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past. Small businesses will be among those licensees that will benefit from the advantages of a flexible and less burdensome licensing scheme.

90. Several petitioners asked the Commission to limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents. The Commission specifically considered and rejected a proposal to limit eligibility for geographic area licenses to incumbents providing coverage to 70 percent or more of their market areas. In rejecting these proposals, the Commission concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses. The Commission concluded that the competitive bidding process will adequately deter speculation and that open eligibility will foster competition and result in a diverse group of 800 MHz SMR providers, including small businesses.

91. In the *800 MHz Second Report and Order*, the Commission stated that to expedite the auctioning of EA licenses for the lower 230 channels, the Commission would auction these licenses using the five regional groups that were used for the regional narrowband Personal Communications Services (PCS) auction. On reconsideration, the Commission clarifies the method by which the Commission will group licenses for auction. While the Commission continues to believe that licenses should be grouped for competitive bidding purposes in a manner that will reduce the administrative burden on auction participants, particularly small businesses, the Commission will not use the five regional groups based on Basic Trading Areas that were used in the regional narrowband PCS auction. Instead, the Commission direct the Bureau to seek comment on license groupings and determine, pursuant to its delegated authority, what groups, if any, should be established for auctioning the lower 80 and General Category EA licenses.

92. The Commission declined to reconsider its decision in the *Part 1 Third Report and Order* to suspend the availability of installment payment financing for small businesses participating in the auction of the lower 230 channels of the 800 MHz SMR service. To balance the impact of this decision on small businesses, in the *800 MHz Second Report and Order*, the Commission established larger bidding credits for qualifying entities. The Commission believes that the larger bidding credit will provide small businesses with adequate opportunities to participate in the 800 MHz SMR auction.

93. The Commission has also rejected one petitioner's contention that the Commission is required to incorporate gender- and minority-based provisions into its competitive bidding procedures. Recent U.S. Supreme Court decisions has created legal uncertainty on whether special auction provisions for minorities and women could withstand a constitutional challenge. The designated entity bidding credits adopted for the 800 MHz service are gender- and minority-neutral but specifically target small businesses. Auction results indicate that many of the small businesses participating in auctions are also women- and minority-owned, therefore effectively furthering Congress' objective of disseminating licenses among a wide variety of applicants.

F. Report to Congress

94. The Commission will send a copy of this *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Ordering Clauses

95. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j).

96. Accordingly, it is ordered that the petitions for reconsideration or clarification filed by the parties listed in the attachment are granted in part to the extent provided herein, and otherwise are denied.

97. It is furthered ordered that the Commission's rules, are amended. It is further ordered that the provisions of this *Memorandum Opinion and Order on Reconsideration* and the Commission's rules, as amended in the rule changes, shall become effective February 18, 2000.

98. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Memorandum Opinion and Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry,

Common carriers, Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.615 is revised to read as follows:

§ 90.615 Spectrum blocks available in the General Category for 800 MHz SMR General Category.

TABLE 1.—806–821/851–866 MHz BAND CHANNELS (150 CHANNELS)

Spectrum block	Channel Nos.
D	1 through 25
D1	26 through 50
E	51 through 75
E1	76 through 100
F	101 through 125
F1	126 through 150

3. Section 90.619 is amended by revising the ''General Category (12 Channels)'' entries in Table 4A in paragraph (a)(5), Table 12 in paragraph (b)(8), the ''General Category (5 Channels)'' entries in Table 16 in paragraph (b)(9), Table 20 in paragraph (b)(10), and the ''General Category (18 Channels)'' entries in Table 24 in paragraph (b)(11) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S/Canada border areas.

(a) * * *

(5) * * *

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMR AND GENERAL CATEGORIES 806–821/851–866 MHz BAND (95 CHANNELS)

[EA-Based SMR Category (83 Channels)]

* * * * *

Spectrum Block	Channel Nos.
General Category (12 Channels)	
D	275–315
D1	355–395
E	276–316
E1	356–396
F	277–317
F1	357–397

(b) * * *

(8) * * *

TABLE 12.—SMR AND GENERAL CATEGORIES—95 CHANNELS

[Regions 1, 4, 5, 6]

Spectrum block	Channel Nos.
EA-Based SMR Category (90 Channels)	
A	None
B	463 through 480
C	493 through 510, 523 through 540, 553 through 570, 583 through 600
G through V	None
General Category (5 Channels)	
D	None
D1	30
E	60
E1	90
F	120
F1	150

(9) * * *

TABLE 16.—SMR AND GENERAL CATEGORIES—60 CHANNELS

[Region 2]

* * * * *

Spectrum Block	Channel Nos.
General Category (5 Channels)	
D	18
D1	36
E	54–72
E1	90
F	None
F1	None

(10) * * *

TABLE 20.—SMR AND GENERAL CATEGORIES (135 CHANNELS)

[Region 3]

Spectrum Block	Channel Nos.
SMR Category (120 Channels)	
A	417 through 420
B	421 through 440, 457 through 480
C	497 through 520, 537 through 560, 577 through 600
G through V	None
General Category (15 Channels)	
D	38–39–40
D1	158–159
E	78–79–80
E1	160–198
F	118–119–120
F1	199–200

(11) * * *

TABLE 24.—(REGIONS 7,8) SMR AND GENERAL CATEGORIES—190 CHANNELS

* * * * *

Spectrum Block	Channel Nos.
General Category (18 Channels)	
D	35 through 37
D1	38 through 40
E	75 through 77
E1	78 through 80
F	115 through 117
F1	118 through 120

* * * * * *

4. Section 90.621 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(3) introductory text to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. For Channel Blocks A, through V, as set forth in § 90.917(d), the separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks D through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been

granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks D through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks D through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

5. Section 90.693 is revised to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

(a) *General provisions.* These provisions apply to ''incumbent licensees'', all 800 MHz licensees authorized in the 806–821/851–866 MHz band who obtained licenses or filed applications on or before December 15, 1995.

(b) *Spectrum blocks A through V.* An incumbent licensee's service area shall be defined by its originally licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual height of the antenna above average terrain (HAAT) along each radial. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 40 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(c) *Special provisions for spectrum blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) *Consolidated license*—(1) *Spectrum blocks A through V.* Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 MHz SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 22 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

(2) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

6. Section 90.903 is amended by revising paragraph (b)(1) to read as follows:

§ 90.903 Competitive bidding mechanisms.

* * * * *

(b) *Grouping.* (1) All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the

auction, an alternative method of grouping these licenses for auction.

* * * * *

[FR Doc. 99–32841 Filed 12–17–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991210334–9334–01; I.D. 112399A]

RIN 0648–AN41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule implements changes to the management measures for the red snapper fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico as requested by the Gulf of Mexico Fishery Management Council (Council) to reduce overfishing. This rule modifies the recreational and commercial fishing seasons, increases the recreational minimum size limit, and reinstates a 4–fish bag limit for the captain and crew of for-hire vessels (i.e., charter vessels and headboats). The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

DATES: This rule is effective January 19, 2000 through June 19, 2000, except that § 622.34(n) is effective January 1, 2000, through June 19, 2000. Comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on January 19, 2000.

ADDRESSES: Written comments on this interim rule must be mailed to Dr. Roy Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the documents supporting this rule, which include an analysis of the economic consequences of the rule and an environmental assessment, may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council has requested an interim rule to adjust management measures for the recreational and commercial red snapper fisheries for the 2000 fishing year, with certain provisions effective January 1, 2000. The requested adjustments are: (1) An increase in the recreational minimum size limit to 16 inches (40.6 cm); (2) establishment of a recreational season of April 21 to October 31, 2000; (3) reinstatement of the 4–fish bag limit for captain and crew of for-hire vessels; and (4) a change in the openings of the spring red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning February 1.

The Council adopted these adjustments, as well as others, for a proposed regulatory amendment to establish red snapper management specifications for 2000. The Council is preparing the regulatory amendment for submission to NMFS for review, approval, and implementation under the FMP's framework procedure. NMFS will implement any approved regulatory amendment measures through the framework's proposed and final rulemaking procedure; the final rule would replace the interim rule.

At this time, NMFS is not implementing any measures to reduce overfishing beyond those requested by the Council. The Council recommended no change to the status quo TAC of 9.12 million pounds; thus, this interim rule does not address or alter the current TAC. The Magnuson-Stevens Act as amended by the Sustainable Fisheries Act (SFA) mandates that overfished stocks be rebuilt to a biomass level capable of producing maximum sustainable yield (MSY). On November 17, 1999, NMFS disapproved the Council's rebuilding schedule proposed for red snapper in its Generic SFA Amendment to the Gulf of Mexico Fishery Management Council Fishery Management Plans because it specified a fishing-mortality-based rebuilding target rather than a biomass-based target and because it did not estimate the time to rebuild in the absence of fishing mortality consistent with the Magnuson-Stevens Act and the national standard guidelines. The Council must submit a new rebuilding plan as soon as possible.

The recent stock assessment included a wide range of estimates of MSY and the stock biomass associated with MSY for red snapper. NMFS recognizes that there is considerable uncertainty associated with these estimates, and the Council has latitude to consider this uncertainty when developing a new rebuilding plan. Conditions approaching those estimated to exist near MSY for red snapper have not been seen in decades, and thus the assessment models require assumptions regarding the productivity of the stock to predict MSY. The SFA requires greater reductions in the red snapper harvest and in shrimp trawl bycatch mortality of juvenile red snapper than previous management targets. Depending on the reduction of red snapper bycatch mortality achieved in the shrimp fishery and appropriate rebuilding parameters, the 1999 Reef Fish Stock Assessment Panel (RFSAP) estimates of acceptable biological catch (ABC) for TAC range from 0 to 9.12 million pounds. The best available scientific information indicates that the 9.12 million pound TAC for 2000 may slow the rate of recovery in the early years of any rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved as expected. However, an immediate and significant reduction in TAC would have devastating effects upon participants in the fishery.

NMFS will continue to provide the Council with the best available scientific information regarding the status of the red snapper stock, the effectiveness of bycatch reduction devices (BRDs), and the effectiveness of the FMP's management measures in rebuilding the overfished red snapper resource. NMFS is working with the commercial fishing industry to develop new BRDs that will further reduce finfish bycatch while minimizing shrimp loss. Also, NMFS will continue to work with the Council in implementing the FMP's current red snapper stock rebuilding plan and in modifying this plan as necessary to restore the stock to a biomass level capable of producing maximum sustainable yield. Management options include adjustments to the fishing season, bag limit changes, quota reductions, fishing effort reduction,

vessel buy-back programs, and additional measures to reduce shrimp trawl bycatch mortality.

The adjustments implemented by this interim rule are needed to reduce overfishing while allowing the total allowable catch (TAC) to be harvested by fair, equitable, and effective means. These changes will reduce overfishing by: (1) Increasing the likelihood of compatible closures of state waters during Federal closures, thereby improving enforcement of closures of the EEZ recreational red snapper fishery and reducing the harvest from state waters during Federal closures; (2) improving compliance with Federal regulations by opening the recreational fishery during the time of greatest demand and reducing confusion among anglers by achieving compatible state and Federal regulations; and (3) reducing the rate of harvest in the commercial fishery, thus reducing the probability of the commercial fishery exceeding its quota. These 2000 red snapper measures are based, in part, on the recommendations to the Council from a stakeholder conference held in New Orleans, LA, on September 27, 1999. Stakeholders' recommendations for the 2000 recreational red snapper fishery included a 4–fish bag limit for the captain and crew of for-hire vessels, a size limit not to exceed 16 inches (40.6 cm), and a March 1 to October 31 recreational season. To reduce overfishing, these changes must be in effect before the fishing seasons begin.

Section 407(d) of the Magnuson-Stevens Act requires NMFS to close the Gulf of Mexico recreational red snapper fishery after the recreational quota (currently 4.47 million lb (2.03 million kg)) is caught. The recreational fishery was closed based on projections that the quota would be reached on November 27 in 1997, on September 29 in 1998, and on August 29 in 1999. Under the current 4–fish bag limit and 15–inch (38.1 cm) minimum size limit, NMFS projects that with a January 1 opening date for the recreational fishery, the 2000 quota (4.7 million lb (2.03 million kg)) would be caught on July 29, 2000; consequently, the fishery would be closed at 12:01 am on July 30, 2000.

The recreational fishery has exceeded its quota each year since 1997. This interim rule is intended to address this problem and to reduce the excess fishing mortality. Compatible state closures are essential for Federal closures to be effective. During 1999, the recreational red snapper fishery in most Gulf states' waters remained open for at least 3 months after the Federal closure. Under current regulations, the recreational fishery in the EEZ would be open from January 1 to July 30, 2000. NMFS expects that the Gulf states would also open their fisheries on January 1, but they would not implement compatible closures and would not close state waters until at least October 31, as occurred during 1999. Thus, the harvest of red snapper in state waters would continue after the Federal closure. Furthermore, the lack of compatible regulations impedes enforcement of Federal regulations, results in reduced compliance, and increases overfishing. NMFS expects that four of the five Gulf states will implement rules compatible with this interim rule in 2000. By allowing the recreational fishery to be open during the time of greatest demand, compliance with regulations will be improved, thus, reducing overfishing. The change in the commercial season should reduce the rate of harvest and the probability of exceeding the commercial quota.

Recreational Season

The Council, in its proposed regulatory amendment for 1999 red snapper measures, recommended a delay in the opening of the recreational fishery from January 1 until March 1. The Council recommended this delay to extend the fishing season into the fall. However, analyses indicated that with a March 1 start, the fishery would close on July 30. Instead of extending the season into the fall, there would be a net loss of fishing days for the year. NMFS disapproved this measure because it would violate Magnuson-Stevens Act national standard 4, which requires that allocation of fishing privileges be fair and equitable. Public comments on the proposed rule for the 1999 regulatory amendment opposed the delay in the season opening; however, public testimony presented to the Council indicated substantial support for the delay if the season could be extended into the fall. NMFS recognizes that there will be considerable opposition to any closure of the red snapper recreational fishery regardless of the season closed.

Following disapproval of this measure, the stakeholders at the September 27, 1999, conference recommended a red snapper recreational season from March 1 to October 31. The Council attempted, to the extent possible, to implement the stakeholders' recommendations; however, based on the best available scientific information, the harvest from a March 1 to October 31 season would exceed the current recreational quota. The stakeholders' recommendations and testimony presented to the Council indicate that a season from April 21 to October 31 offers the greatest benefits to Gulf anglers and, based upon the best available scientific information, is compatible with the recreational quota. A group of south Texas anglers, who participated in the stakeholders conference, submitted a minority opinion requesting a year-round fishery with a 4–fish bag limit and a 13–inch (33.0–cm) minimum size limit. However, the harvest from a year-round fishery, if implemented, would greatly exceed the quota and jeopardize the recovery of the stock. Therefore, the Council recommended a shorter season as close to the stakeholders' recommendation as possible.

The stakeholders discussed the request for a winter fishery from some south Texas anglers, but neither the stakeholders nor the south Texas minority report recommended a winter fishery. At the November Council meeting, the Council considered adding a January-February opening with a reduced bag limit to allow a winter fishery in response to requests from Texas representatives. The Council concluded that there was no way to do so without substantially shortening the prime April to October season and, thus, increasing the likelihood that illegal fishing during the closed season would occur, resulting in overfishing of the recreational quota. Furthermore, it is unlikely that other Gulf states, including Texas, would enact the compatible closures required to accommodate a winter fishery; consequently, the EEZ would be closed without compatible state closures thereby resulting in overfishing.

The interim rule provides Texas anglers, as well as anglers in other states, the opportunity to fish during the months of greatest historical demand. During 1996, the last year that the red snapper fishery was open year round, Texas monthly landings during May-October exceeded those of any other months. Analyses based on recent years (1995–1998) show that during January-March, monthly landings in Texas average 96,000 pounds (43,545 kg), substantially less than during August-October when monthly landings average 137,000 pounds (62,142 kg). Furthermore, the interim rule will provide economic benefits to the Texas for-hire industry by allowing the industry to operate during the months of greatest demand. Texas headboat trips during January-March average 5,000 trips per month as opposed to 8,000 trips per month during August-October. Texas charter boat trips show a similar trend, with an average of 1,200 trips per month during January-March and 2,000 trips per month during August-October. The March 1 opening previously

disapproved by NMFS would not have provided these benefits since the season would have closed on July 30 and would not have been extended into the fall.

Recreational Size Limit

The increase in the recreational minimum size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm) is an essential component of the modified recreational fishing season. It will reduce the harvest rate and, in combination with the bag limit and closed seasons, will help ensure that the recreational quota is not exceeded and reduce overfishing. NMFS projections indicate that the reduction in catch rates from the increased size limit would allow the season to be extended by approximately 3 weeks without a significant increase in harvest. Increasing the minimum size limit constrains harvest rates by increasing the proportion of anglers who are unable to catch their bag limit. The NMFS Southeast Fisheries Science Center has determined that the measures contained in this interim rule, including any additional release mortality associated with the increase in the minimum size limit, will not jeopardize the long-term recovery of the stock. The extension of the fishing season will provide economic benefits to the recreational fishery and the Gulf tourism industry. The stakeholders recommended 16 inches (40.6 cm) as the largest minimum size acceptable to the recreational fishery.

The Council did not propose a corresponding increase in the existing commercial size limit of 15 inches (38.1 cm). The Council justified the discrepancy between the two size limits based on the different release mortality rates in the two fisheries and the need to extend the recreational season by increasing the minimum size limit. Commercial fishers fish in deeper water than recreational fishers and use electric reels, which bring fish to the surface more quickly than recreational fishers; consequently, the mortality rate of fish released in the commercial fishery (33 percent) is greater than that in the recreational fishery (20 percent). The best available scientific information suggests that few conservation benefits are provided by increases in the minimum size limit at release mortality rates of 33 percent or greater.

Recreational Bag Limit

Reinstating the 4–fish bag limit for captain and crew of for-hire vessels relieves a restriction on that sector of the fishery. The final rule for the 1999 red snapper regulatory amendment (64 FR 47711, September 1, 1999) implemented the existing 0–fish bag limit for captain and crew. The for-hire industry has vigorously opposed this measure. NMFS expects that none of the Gulf states will enact a compatible 0–fish bag limit measure, and, thus, enforcement of the measure would be difficult. If compliance with the measure is minimal, the harvest rate upon which the corresponding extension of the season is based will not be reduced and overfishing will occur. Restoring the captain-and-crew bag limit will encourage cooperation and voluntary compliance by the for-hire sector, which accounts for the greatest portion of the recreational harvest. By restoring the captain-and-crew bag limit, the projected fishery closure date will be based on an assumed catch rate reduction that will, in fact, be realized because of compatible state regulations. In addition, the measure will encourage cooperation and voluntary compliance by the for-hire sector, which accounts for the greatest portion of the recreational harvest, and, thereby, reduce overfishing.

NMFS approved the 0–fish bag limit for captain-and-crew last season because it extended the recreational season without a corresponding increase in harvest. Subsequent public comment and the recommendations of the stakeholders indicate that participants in the fishery are willing to sacrifice fishing days to reinstate the bag limit for captain and crew. Thus, NMFS has reinstated the 4–fish bag limit for the for-hire sector and delayed the starting date of the recreational season from April 15 (as requested by the Council) to April 21 to prevent a corresponding increase in harvest.

Spring Commercial Season

Reducing the openings of the spring commercial fishery from 15 days per month to 10 days per month will slow the harvest rate and reduce the probability of exceeding the commercial quota and overfishing. The shorter season will allow additional time between 10-day fishing periods to evaluate landings and, thus, reduce the probability of exceeding the commercial quota. This measure also will reduce confusion among fishers by providing consistent spring and fall fishing periods and, thus, increase compliance. Projections by the Council's Socioeconomic Panel and the experience of the 10-day openings (9 fishing days) during the 1999 fall season suggest that the reduced harvest rate also will help maintain price stability. This action should allow commercial red snapper fishermen to generate more revenue with the same amount of catch, which should help reduce the incentive to pursue a derby fishery that would likely result in a quota overrun.

The NMFS Southeast Fisheries Science Center (Center) has determined that this interim rule is based on the best available scientific information and will not jeopardize the long-term recovery of the stock. The Center concluded that the interim measures would address overfishing of red snapper and are consistent with the FMP and the Magnuson-Stevens Act. The Center also emphasized the uncertainty associated with projections of catch rates in the recreational fishery and certified that the recreational quota is within the margin of error of the harvest projected under the measures contained in this interim rule.

NMFS finds that this interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this interim rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days, provided that the public has had an opportunity to comment on the interim rule and provided that the Council is actively preparing proposed regulations to address this overfishing on a permanent basis. Public comments on this interim rule are invited and will be considered in determining whether to maintain or extend this rule to address overfishing of red snapper. The Council is preparing a regulatory amendment under the FMP framework procedure to address, on a permanent basis, red snapper overfishing issues that are the subject of this rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim rule has been determined to be significant for purposes of E.O. 12866.

This rule was submitted to the states of Florida, Alabama, Mississippi, Louisiana, and Texas for review under section 307(c) of the Coastal Zone Management Act, with a request for an alternative notification schedule and expedited review (15 CFR 930.34(b)). All of the reviewing states agreed to the expedited schedule, and all states except Texas either concurred with NMFS' determination of consistency with their approved coastal management programs (CMPs) or found

the matter not subject to consistency review. The Texas Coastal Coordination Council (TCCC) determined the interim rule to be inconsistent with Texas' CMP based on its belief that the rule conflicts with the goals of 31 TAC 501.12(2) and (8). Paragraphs (2) and (8) of 31 TAC 501.12 are similar to National Standards for Fishery Conservation and Management Two and Eight of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2) and (8)). The TCCC also believed the rule to be inconsistent with Magnuson-Stevens Act National Standards Two, Four, Six, Eight, and Ten. The TCCC urged special regulations for the red snapper fishery off Texas, without suggesting any specifics.

NMFS disagrees with the TCCC, and responded by letter dated December 14, 1999, that, to the maximum extent practicable with the requirements of Magnuson-Stevens Act National Standards One, Two, Three, Four, Six, Eight, and Ten (16 U.S.C. 1851(a)(1), (2), (3), (4), (6), (8), and (10)), the interim rule is consistent with Texas' CMP. While the Council plans to examine the issue of separate management measures for the waters off the coast of Texas, the present administrative record does not support the existence of a separate red snapper fishery there.

National Standard Two (16 U.S.C. 1851(a)(2)) requires that management measures be based on the best scientific information available. National Standard Three (16 U.S.C. 1851(a)(3)) requires that a stock of fish be managed as a unit throughout its range. The stock of Gulf of Mexico red snapper ranges throughout the Gulf of Mexico, with no separate stock as yet scientifically identified off the Texas coast. National Standard Four (16 U.S.C. 1851(a)(4)) prohibits discrimination between residents of different states and requires, inter alia, that the allocation of fishing privileges among United States fishermen be fair and equitable. The measures in this interim rule, particularly the recreational fishing season, are consistent with longstanding historical fishing practices of all participants in the Gulf of Mexico red snapper fishery, including Texas fishermen.

With respect to National Standard Eight (16 U.S.C. 1851(a)(8)), the interim rule preserves recreational fishing opportunities for Texas fishing communities during the months of greatest historical demand. In addition, opening the recreational fishery during winter months is not practicable since it would result in an earlier fishery closure and decrease the likelihood of compatible regulations among most Gulf coastal States, which, in turn, would increase the likelihood of recreational quota overruns and overfishing, which is prohibited by National Standard One (16 U.S.C. 1851(a)(1)). Similarly, the rule preserves commercial fishing opportunities as well. With respect to National Standard Ten (16 U.S.C. 1851(a)(10)), the interim rule is not likely to affect safety at sea adversely since the commercial 10-day monthly seasons will actually reduce the incentive for a derby fishery.

National Standard Six (16 U.S.C. 1851(a)(6)) requires consideration of, and allowance for, variations and contingencies in fisheries, fishery resources and catches. TCCC believes that there is a higher release mortality rate for red snapper in the deeper waters of the western Gulf of Mexico and that NMFS has not taken this into consideration. NMFS used a release mortality rate of 20 percent for the recreational fishery based upon the best scientific information available, as required by National Standard Two. The administrative record does not contain sufficient documentation of, or scientific bases for, using higher release mortality rates.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared an economic analysis of the expected regulatory impacts of the interim rule. NMFS analyzed commercial fishing derbies during the last decade to determine the probable economic consequences of commercial spring and fall seasons consisting of a series of 10-day mini-derbies during the year 2000. NMFS concluded that a series of 10-day commercial derbies conducted under a 9.12 million-lb (4.14 million-kg) TAC could measurably increase the average total and net revenues for the year compared to 15-day openings. Shorter mini-seasons during 1998–99 reduced landings per month, supported higher ex-vessel prices, and extended domestic supplies. The expected economic consequences for the recreational sectors are less definite because of uncertainties regarding the recreational catch that may be realized versus recreational catches that can be forecast with available data.

If the changes in the recreational fishery regulations, which include an April 21 to October 31 season and an increase in the size limit to 16 inches (40.6 cm), result in catches that are no greater than the recreational quota, then NMFS expects an increase in net benefits for all portions of the recreational fishery in aggregate. However, if the realized catches exceed the quota, then longer-term benefits will be reduced because stock recovery will be slowed by an indeterminate amount. In theory, if the management measures in this interim rule are very different from the management measures preferred by the Gulf states, it is unlikely that the Gulf states will adopt compatible regulations. Under incompatible Federal and state regulations, harvests will probably continue in state waters after Federal closures. These harvests will impede stock rebuilding efforts. Under the existing management scheme, for example, harvests during the Federal closures could exceed 600,000 lb (272,155 kg) during a fishing year. The Gulf states are more likely to adopt any scenario approximating the Council's requested season of April 15–October 31, thus reducing the negative effects of incompatible Federal and state rules.

Copies of the economic analysis are available upon request (see **ADDRESSES**).

This interim rule addresses overfishing. In the past, the lack of compatible management of the red snapper fishery by most Gulf states resulted in continued fishing in state waters after Federal waters were closed. This contributed to quota overruns and overfishing. NMFS anticipates that four of the five Gulf states will adopt measures compatible with the measures of this interim rule. This will enhance the effectiveness of the closed seasons and will significantly reduce the probability of overfishing. The increase in the recreational minimum size limit will reduce the harvest rate and, in combination with the bag limit and closed seasons, will help ensure that the recreational quota is not exceeded and that overfishing does not occur. Reducing the openings of the commercial fishery from 15 days per month to 10 days per month will slow the harvest rate and reduce the probability of exceeding the commercial quota and overfishing. Reinstating the 4–fish bag limit for captain and crew of for-hire vessels relieves a restriction on that sector of the fishery. The Council provided public notification in the **Federal Register** on October 25, 1999, of the red snapper issues that would be considered at its November 8–12, 1999, Council meeting and afforded the public the opportunity at that meeting to comment on the measures contained in this interim rule. Delaying action to reduce overfishing in the red snapper fishery of the Gulf of Mexico to provide further notice and an opportunity for

public comment would increase the likelihood of a loss of long-term productivity from the fishery and increase the probable need for more severe restrictions in the future. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds, for good cause, namely the reasons set forth above, that providing prior notice and the opportunity for prior public comment would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of § 622.34(n) would be contrary to the public interest. Section 622.34(n) delays the opening of the recreational fishing season from January 1 until April 21 to allow the limited quota to be harvested during the peak recreational fishing season. If § 622.34(n) is not effective on January 1, 2000, the recreational fishery would begin on January 1, and NMFS would have to compensate for any landings between January 1 and the effective date of § 622.34(n) by shortening the proposed April 21–October 31 season preferred by a majority of the recreational sector. Accordingly, § 622.34(n) is being made effective January 1, 2000, thereby providing the maximum delayed effectiveness, 12 days, consistent with achieving the objectives of this rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (l) is suspended, and paragraphs (m) and (n) are added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on September 1, whichever occurs first. From September 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(viii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limits have been reduced to zero, such possession is limited to zero during a closed period.

(n) *Closures of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1, 2000, to April 21, 2000, and from November 1, 2000, through December 31, 2000. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

3. In § 622.37, paragraph (d)(1)(iv) is suspended and paragraph (d)(1)(vi) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(vi) Red snapper–16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(viii) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, paragraphs (b)(1)(iii) and (b)(1)(v) are suspended and paragraphs (b)(1)(viii) and (b)(1)(ix) are added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(viii) Red snapper–4.

(ix) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) and in (b)(1)(vi) through (b)(1)(viii) of this section and excluding dwarf sand perch and sand perch—20.

* * * * *

[FR Doc. 99–32874 Filed 12–15–99; 4:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 120899F]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 4 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Quarter 4 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 4 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the northeast region for the remainder of the 1999 Quarter 4 quota period (through December 31, 1999). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3' N. lat.

DATES: Effective December 20, 1999, 0001 hrs, local time through December 31, 1999, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, at (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The Quarter 4 commercial quota (October through December) is distributed to the coastal states from Maine through North Carolina. The

process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 1999 calendar year was set equal to 3,025,000 lb (1,372,117 kg)(63 FR 72203, December 31, 1998). The Quarter 4 period quota, which is equal to 19.77 percent of the annual commercial quota, was set at 598,043 lb (271,268 kg).

Section 648.140(d)(2) requires the Regional Administrator to determine the date a quarterly commercial quota has been harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 4 period, north of 35°15.3' N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 1999 Quarter 4 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the Quarter 4 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, December 20, 1999, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3' N. lat. by vessels holding commercial Federal fisheries permits are prohibited through December 31, 1999, 2400 hrs local time. The Quarter 1 period for commercial black sea bass harvest will open on January 1, 2000. Effective December 20, 1999, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders that land in coastal states from Maine through North Carolina for the remainder of the Quarter 4 period (through December 31, 1999).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator (see Table to § 600.502) and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 14, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32921 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 243
Monday, December 20, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 96N–0277]
RIN 0910–AA01

Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing additional criteria and procedures by which over-the-counter (OTC) conditions may become eligible for consideration in the OTC drug monograph system. The proposed criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience could meet the statutory definition of marketing ''to a material extent'' and ''for a material time'' and become eligible. If found eligible, the condition would be evaluated for general recognition of safety and effectiveness in accordance with FDA's OTC drug monograph regulations. FDA is also proposing changes to the current OTC drug monograph procedures to streamline the process and provide additional information in the review.

DATES: Submit written comments by March 22, 2000. See section V of this document for the effective date of any final rule that may issue based on this proposal.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Donald Dobbs, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The OTC drug monograph system was established to evaluate the safety and effectiveness of all OTC drug products marketed in the United States before May 11, 1972, that were not covered by new drug applications (NDA's) and all OTC drug products covered by ''safety'' NDA's that were marketed in the United States before enactment of the 1962 drug amendments to the Federal Food, Drug, and Cosmetic Act (the act). In 1972, FDA began its OTC drug review to evaluate OTC drugs by categories or classes (e.g., antacids, skin protectants), rather than on a product-by-product basis, and to develop ''conditions'' under which classes of OTC drugs are generally recognized as safe and effective (GRAS/E) and not misbranded.

FDA publishes these conditions in the **Federal Register** in the form of OTC drug monographs, which consist primarily of active ingredients, labeling, and other general requirements. Final monographs for OTC drugs that are GRAS/E and not misbranded are codified in part 330 (21 CFR part 330). Manufacturers desiring to market an OTC drug covered by an OTC drug monograph need not seek FDA clearance before marketing.

In the **Federal Register** of October 3, 1996 (61 FR 51625), FDA published an advance notice of proposed rulemaking (ANPRM) stating that it was considering proposing to amend its regulations to include criteria under which certain additional OTC drug conditions may become eligible for inclusion in the OTC drug monograph system. Interested persons were invited to submit written comments by January 2, 1997. The agency received 16 comments, which it discusses in section III. of this document.

Under this proposal, eligibility for consideration in the OTC drug monograph system would be determined by showing a condition's use ''to a material extent'' and ''for a material time'' in compliance with the existing statutory requirements of the act. A number of ingredients have been marketed in OTC drug products under NDA's approved after May 11, 1972. The agency is providing criteria and procedures in this proposal for manufacturers who wish to have ingredients such as these considered for OTC drug monograph status.

For OTC drug products without any U.S. marketing experience, this proposal represents a change in the agency's previous interpretation of ''use'' requirements in section 201(p) of the act (21 U.S.C. 321(p)). Previously, the agency interpreted the use provision to mean use in the United States only. The agency is proposing this change in policy to expand use to include foreign marketing experience because it believes that under certain circumstances use outside the United States may appropriately be considered to satisfy the use requirements in section 201(p) of the act.

In the ANPRM, the agency used the term ''condition'' to refer to OTC drug active ingredients, indications, dosage forms, dosage strengths, routes of administration, and active ingredient combinations. In this proposal, the agency is clarifying that the term ''condition'' refers to an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use. The agency is adding the reference to botanical drug substance to clarify that the agency recognizes that the information needed for consideration of a botanical substance for inclusion in the OTC drug monograph system may differ from the information needed to evaluate other types of active ingredients for this purpose.

II. Description of the Proposed Rule

Currently, the OTC drug regulations in part 330 do not define eligibility requirements for consideration in the OTC drug monograph system or what constitutes marketing to a material extent or for a material time. This proposed rule sets forth criteria for defining material extent and material

time and procedures for considering additional ''conditions'' (as clarified in section I. of this document) in the OTC drug monograph system. The definition of ''conditions'' is included in proposed § 330.14(a).

Proposed § 330.14(b) describes the criteria for consideration for inclusion in the OTC drug monograph system. Proposed § 330.14(b)(1) would require that the condition be marketed for OTC purchase by consumers. If the condition is marketed in another country in a class of OTC drug products that may be sold only in a pharmacy, with or without the personal involvement of a pharmacist, it must be established that this marketing restriction does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use (section 503(b)(1)(A) of the act (21 U.S.C. 353(b)(1)(A))). If the restriction is related to such concerns, FDA would not consider this type of marketing to be similar to the broad OTC drug marketing in the United States, where products are marketed in a variety of outlets (e.g., grocery stores, convenience stores, drugstores), with no opportunity or requirement for professional consultation.

Proposed § 330.14(b)(2) would require that if the condition under consideration is marketed OTC in a foreign country, and its marketing in the United States is limited to prescription drug use, it would not be eligible for inclusion in an OTC drug monograph. FDA has determined that such a condition requires a prescription and cannot be considered GRAS/E for OTC use. Therefore, any request for OTC marketing status should be made under the NDA.

Proposed § 330.14(b)(3) would require OTC marketing for a minimum of 5 continuous years in the same country or countries and in sufficient quantity, as described in § 330.14(c)(2)(ii), (c)(2)(iii), and (c)(2)(iv). FDA is proposing these requirements to ensure that marketing is of sufficient duration to detect infrequent but serious adverse drug experiences (ADE's) that are occurring.

At this time, OTC drug monographs do not include timed-release formulations. These products are regulated as new drugs under § 310.502(a)(14) (21 CFR 310.502(a)(14)), and this document does not propose to change that status.

The agency is proposing a specific format for the submission of eligibility information to the agency. This format is intended for sponsors to provide specific information in a uniform manner to enable the agency to streamline the review process. Proposed § 330.14(c) describes the new time and extent application (TEA) sponsors would be required to submit when requesting consideration of a condition subject to this section. All of the information in proposed § 330.14(c)(1) through (c)(5) needs to be included in accordance with the procedures in proposed § 330.14(d). The information requested in § 330.14(c)(2), (c)(2)(i) through (c)(2)(iv), and (c)(3) is to be provided in a table format. If the condition is found eligible, then safety and effectiveness data would subsequently be submitted under the procedures proposed in § 330.14(f) and reviewed under the procedures in proposed § 330.14(g). If the agency initially determines that the condition can be considered safe and effective, then it will propose monograph status under the procedures in proposed § 330.14(g)(3).

Under proposed § 330.14(c)(1), sponsors must submit basic information about the condition that includes a detailed description of the active ingredient(s) or botanical drug substance(s), which are more fully described in § 330.14(c)(1)(i) and (c)(1)(ii), pharmacologic class(es), intended OTC use(s), OTC strength(s) and dosage form(s), route(s) of administration, directions for use, and the applicable existing OTC drug monograph(s) under which the condition would be marketed or the request and rationale for creation of a new OTC drug monograph(s). Proposed § 330.14(c)(1)(iii) allows reference to the current edition of the U.S. Pharmacopeia (USP)–National Formulary (NF) to help satisfy the requirements of the description of the active ingredient(s) or botanical drug substance(s).

Under proposed § 330.14(c)(2), sponsors must submit a list of all countries in which the condition has been marketed. This information is important to determine if the marketing experience is broad enough to ensure that an adequate safety profile exists.

Proposed § 330.14(c)(2)(i) would require sponsors to describe how the condition has been marketed in each country (e.g., OTC general sales direct-to-consumer; sold only in a pharmacy, with or without the personal involvement of a pharmacist; dietary supplement; or cosmetic). If marketed as an OTC pharmacy-only product, the sponsor must establish that this marketing restriction does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use (section 503(b)(1)(A) of the act). This information is important because diversity in the way products are marketed in other countries may indicate safety concerns that would be important to consider in determining suitability for OTC drug sale in the United States.

Proposed § 330.14(c)(2)(ii) would require sponsors to submit data on the number of dosage units sold in each country. Information presented should include: (1) The total number of dosage units sold, (2) the number of units sold by package sizes (e.g., 24 tablets, 120 milliliters (mL)), and (3) the number of doses per package based on the labeled directions for use. This information is important to FDA's assessment of the extent of marketing. This information is to be presented in two formats: (1) On a year-by-year basis, and (2) cumulative totals. The agency will maintain the year-to-year sales data as confidential, unless the sponsor waives this confidentiality. The agency will make the cumulative totals public should the condition be found eligible for consideration in the OTC drug monograph system.

Proposed § 330.14(c)(2)(iii) would require sponsors to adequately describe each country's marketing exposure (e.g., race, gender, ethnicity, and other pertinent factors) to ensure that marketing experience can be reasonably extrapolated to the U.S. population. Sponsors would have to explain any cultural or geographical differences in the way the condition is used in the foreign country and in the United States. The agency considers it important that OTC marketing experience be relevant to populations who would use such an OTC drug in the United States. The information in this paragraph need not be provided for OTC drugs that have been marketed for more than 5 years in the United States under an NDA.

Under proposed § 330.14(c)(2)(iv), sponsors must submit data on the condition's use pattern in each country, that is, how often it is to be used (according to the label) and for how long. If the use pattern varies in different countries based on the product's packaging and labeling, or if changes in use pattern have occurred over time, the sponsor must describe the use pattern for each country and explain why there are differences or changes. This information is important for evaluating whether the extent of use is adequate to detect infrequent but serious ADE's.

Proposed § 330.14(c)(2)(v) would require sponsors to describe each country's (where the condition is

marketed) system for identifying ADE's, especially those found in OTC marketing experience, including method of collection if applicable. The agency considers this information important to assess the ability of the system to detect ADE's that are occurring.

Under proposed § 330.14(c)(3), sponsors must submit a statement of how long the condition has been marketed in each country, accompanied by all labeling used during the marketing period, specifying the time period that each labeling was used. All labeling that is not in English must be translated to English, in accord with § 10.20(c)(2) (21 CFR 10.20(c)(2)). This information is important to determine whether the condition has been marketed for a material time and whether changes occurred in its labeling (e.g., formulation, warnings, and directions). The agency proposes that this information need not be provided for conditions that have been marketed OTC for more than 5 years in the United States under an NDA.

Under proposed § 330.14(c)(4), sponsors must submit a list of all countries where the condition is marketed only as a prescription drug and the reason(s) why its marketing is restricted to prescription in these countries. This information is useful because the same drug marketed OTC in one country may be limited to prescription in another country, and the agency is interested in knowing the reason(s) why its marketing is restricted to prescription in other countries.

Under proposed § 330.14(c)(5), sponsors must submit a list of all countries in which the condition has been withdrawn from marketing or in which an application for OTC marketing approval has been denied, and include the reasons for such withdrawal or application denial. This information is important to determine why other countries did not grant or withdrew OTC marketing status.

Under proposed § 330.14(c)(6), sponsors must provide the information in § 330.14(c)(2), (c)(2)(i) through (c)(2)(iv), and (c)(3) in a table format. This format is requested to provide for easy comparison of information from one country to another.

Proposed § 330.14(d) would require sponsors to submit three copies of the TEA, which would be handled as confidential until the agency makes a decision on the eligibility of the condition for consideration in the OTC drug monograph system. The TEA would be placed on public display in the Dockets Management Branch only if the condition is found eligible for consideration in the OTC monograph system. This procedure is necessary to allow sponsors to provide all pertinent eligibility information, some of which may be considered confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act (21 U.S.C. 331(j)). Certain manufacturing information might be considered confidential. Year-to-year sales data would be considered confidential, but cumulative sales data over a period of years would not be considered confidential. Any proposed compendial standards would not be considered confidential. If the condition is not found eligible, the TEA will not be placed on public display, but a letter from the agency to the sponsor stating why the condition was not found acceptable will be placed on public display in the Dockets Management Branch.

Under proposed § 330.14(e), if a condition is found eligible, the agency would publish a notice of eligibility in the **Federal Register** and provide the sponsor and other interested parties an opportunity to submit data to demonstrate safety and effectiveness. The agency is proposing this two-step approach to: (1) Prevent sponsors from incurring unnecessary costs for developing safety and effectiveness data for a condition that may not meet basic eligibility requirements, (2) avoid expending agency resources evaluating safety and effectiveness data for a condition that does not meet the basic eligibility requirements, and (3) provide all other interested parties an opportunity to submit data and information on eligible conditions.

Under proposed § 330.14(f), the notice of eligibility will include a request for safety and effectiveness data to be submitted. Under proposed § 330.14(f)(1), sponsors must submit all data and information listed in § 330.10(a)(2) under the outline ''OTC Drug Review Information,'' items III through VII.

Under proposed § 330.14(f)(2), sponsors would be required to include all serious ADE's, as defined in §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80), from each country where the condition has been or is currently marketed as a prescription drug or as an OTC drug or product. Sponsors would be required to provide individual ADE reports (Form FDA 3500A or a format that provides equivalent information) along with a detailed summary of: (1) All serious ADE's, and (2) expected or frequently reported side effects for the condition. Individual reports should be translated if not provided in English. Information derived from individual ADE reports is important in assessing safety, and expected or frequently reported side effects help identify information that should appear in product labeling.

Proposed § 330.14(g) describes the administrative procedures for FDA to use to evaluate the safety and effectiveness data. The agency could: (1) Use an advisory review panel to evaluate the safety and effectiveness data and make recommendations following the provisions of § 330.10(a)(3), (2) evaluate the data in conjunction with the advisory review panel, or (3) evaluate the data on its own without using an advisory review panel. These mechanisms provide the agency with flexibility in determining the most efficient method to evaluate data submissions consistent with the safety, effectiveness, and labeling standards in § 330.10(a)(4)(i) through (a)(4)(vi).

Under proposed § 330.14(g)(1), an advisory review panel may submit a report following the provisions of § 330.10(a)(5), or the panel may provide recommendations in its official minutes of meeting(s). This latter approach provides the agency with a mechanism to receive an advisory review panel's recommendations more quickly, and it eliminates unnecessary administrative burdens.

Under proposed § 330.14(g)(2), the agency may act on an advisory review panel's recommendations following the proposed revised procedures in § 330.10(a)(2) and (a)(6) through (a)(10). This approach provides the agency with a mechanism to be able to act on an advisory review panel's recommendations in a more expeditious manner. The agency is proposing to revise § 330.10(a)(6), (a)(7), and (a)(10) to incorporate these new procedures of placing an advisory review panels's recommendations on public display in the Dockets Management Branch and then acting on those recommendations.

Proposed § 330.14(g)(3) states that if the condition is initially determined to be safe and effective for OTC use in the United States, it will be proposed for inclusion in an appropriate OTC drug monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary.

Proposed § 330.14(g)(4) states how the agency will treat a condition that is initially determined not to be GRAS/E for OTC use in the United States.

Proposed § 330.14(g)(5) provides an opportunity for public comment on a proposal to include or exclude a condition and for publication of a final rule.

Proposed § 330.14(h) would permit marketing only under a final OTC drug

monograph(s) after the agency determines that the condition is GRAS/E and includes it in the appropriate OTC drug final monograph(s), and the condition complies with § 330.14(i). The agency is proposing this approach for several reasons: (1) It allows for thorough public consideration of any safety and effectiveness issues that might arise before marketing begins; (2) it allows for completion of compendial monograph standards for identity, strength, quality, and purity for all manufacturers to use; and (3) it allows manufacturers to avoid expensive relabeling when changes occur between the proposal and the final rule.

Under proposed § 330.14(i), any active ingredient or botanical drug substance included in a final OTC drug monograph must be recognized in an official USP–NF drug monograph, setting forth its standards of identity, strength, quality, and purity, prior to any marketing. The official USP–NF monograph should be consistent with the active ingredient(s) or botanical drug substance(s) used to establish general recognition of safety and effectiveness. The agency is proposing this compendial monograph requirement because the public availability of chemical standards would ensure that all OTC drug products contain ingredients that are equivalent to the active ingredients or botanical drug substances included in an OTC drug monograph. Inclusion in an official compendium of an ingredient's standards of identity, strength, quality, and purity would help ensure that OTC drugs are safe and effective for their intended uses. This USP–NF monograph requirement has been agency policy since 1989 (54 FR 13480 at 13486, April 3, 1989, and 54 FR 40808 at 40810, October 3, 1989).

After further considering how to best evaluate additional conditions that might be included in an OTC drug monograph, the agency's proposal in this document differs in a number of ways from the advance notice of proposed rulemaking. The agency is proposing certain new procedures for consideration of additional conditions in the OTC drug monograph system and amending existing OTC drug review procedures in § 330.10 to provide consistency with the use of these new procedures. The agency is proposing that a TEA containing certain information be submitted when a sponsor requests that an OTC drug initially marketed in the United States after the OTC drug review began in 1972 or an OTC drug without any U.S. marketing experience be considered for inclusion in an OTC drug monograph. Sponsors of additional conditions under these categories will be required to use these new procedures.

The agency will continue to use the existing OTC drug review procedures for conditions subject to the original OTC drug review. This includes: (1) Rulemakings that have not been completed to date (e.g., external analgesic drug products), (2) drug categories that were in the calls-for-data for OTC miscellaneous internal drug products (38 FR 31696, November 16, 1973, and 40 FR 38179, August 27, 1975) and for OTC miscellaneous external drug products (38 FR 31697, November 16, 1973, and 40 FR 38179, August 27, 1975) which the agency has not reviewed to date (e.g., urinary antiseptic drug products), and (3) drug categories that were not included in any of the calls-for-data but in which it can be unequivocally established that eligible products were marketed OTC before the OTC drug review began in 1972.

The new procedures will apply to all conditions marketed initially in the United States after the OTC drug review began in 1972 and all conditions for which the original OTC drug review has been completed but where sponsors want further consideration (e.g., a condition determined as nonmonograph in the original OTC drug review but for which additional data and information are now being presented). Sponsors of conditions in this last category will be required to follow the new procedures so that the agency can obtain the most recent marketing, safety, effectiveness, and compendial standard data and information available for the condition. In addition, because such conditions have been previously determined to be nonmonograph, no interim marketing would be allowed under existing procedures until the condition is included in a final monograph, which is consistent with newly proposed § 330.14(h).

The TEA will be handled as confidential, like the original submissions to an advisory review panel, until the agency makes a decision on the eligibility of the condition for consideration in the OTC monograph system. If the condition is not found eligible, the agency will notify the sponsor by letter, a copy of which will be placed in the Dockets Management Branch, and the TEA will not be placed on public display. If the condition is found eligible, the TEA will be placed on public display in the Dockets Management Branch, after deletion of information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act. Sponsors should identify such information and request that it be considered confidential under these provisions. The agency will publish a notice of eligibility in the **Federal Register** and provide the sponsor of the TEA and other interested parties an opportunity to submit data to demonstrate safety and effectiveness according to proposed § 330.14(f).

The agency will then evaluate the safety and effectiveness data, using the existing OTC drug review standards in § 330.10(a)(4)(i) through (a)(4)(vi). The agency may either convene an advisory review panel to assist in this evaluation or may elect to complete the evaluation alone. If a panel is used, a notice of meeting(s) will be published in the **Federal Register**, and the meeting(s) will be public. If the agency uses an advisory review panel, the panel may submit its recommendations to the agency in its official minutes of meeting(s) or in a separate report. These recommendations will be publicly available (in the docket). The agency will agree or disagree with the panel's recommendations, and proceed directly to a tentative order (notice of proposed rulemaking).

If the agency initially determines that a condition can be GRAS/E for OTC use in the United States, it will propose to include it in an appropriate OTC drug monograph(s). This will be done either by amending an existing monograph(s) or establishing a new monograph(s), if necessary.

If the agency initially determines that a condition cannot be GRAS/E for OTC use in the United States, it will notify the sponsor and other interested parties who submitted data by letter and place a copy of this letter in the Dockets Management Branch. The agency has used this ''feedback'' letter approach for many years during the ongoing OTC drug review, and it has resulted in the resolution of the monograph/nonmonograph status of many conditions prior to publication of a final determination in the **Federal Register**. The agency is proposing the letter approach as a way to provide early notification about the agency's scientific assessment of the data presented. The agency will publish a notice of proposed rulemaking to include the condition in § 310.502, which lists certain drugs determined by rulemaking procedures to be new drugs within the meaning of section 201(p) of the act (21 U.S.C. 321(p)). Interested parties will have an opportunity to submit comments and new data. The agency will subsequently publish a final rule (or reproposal if necessary) in the **Federal Register**.

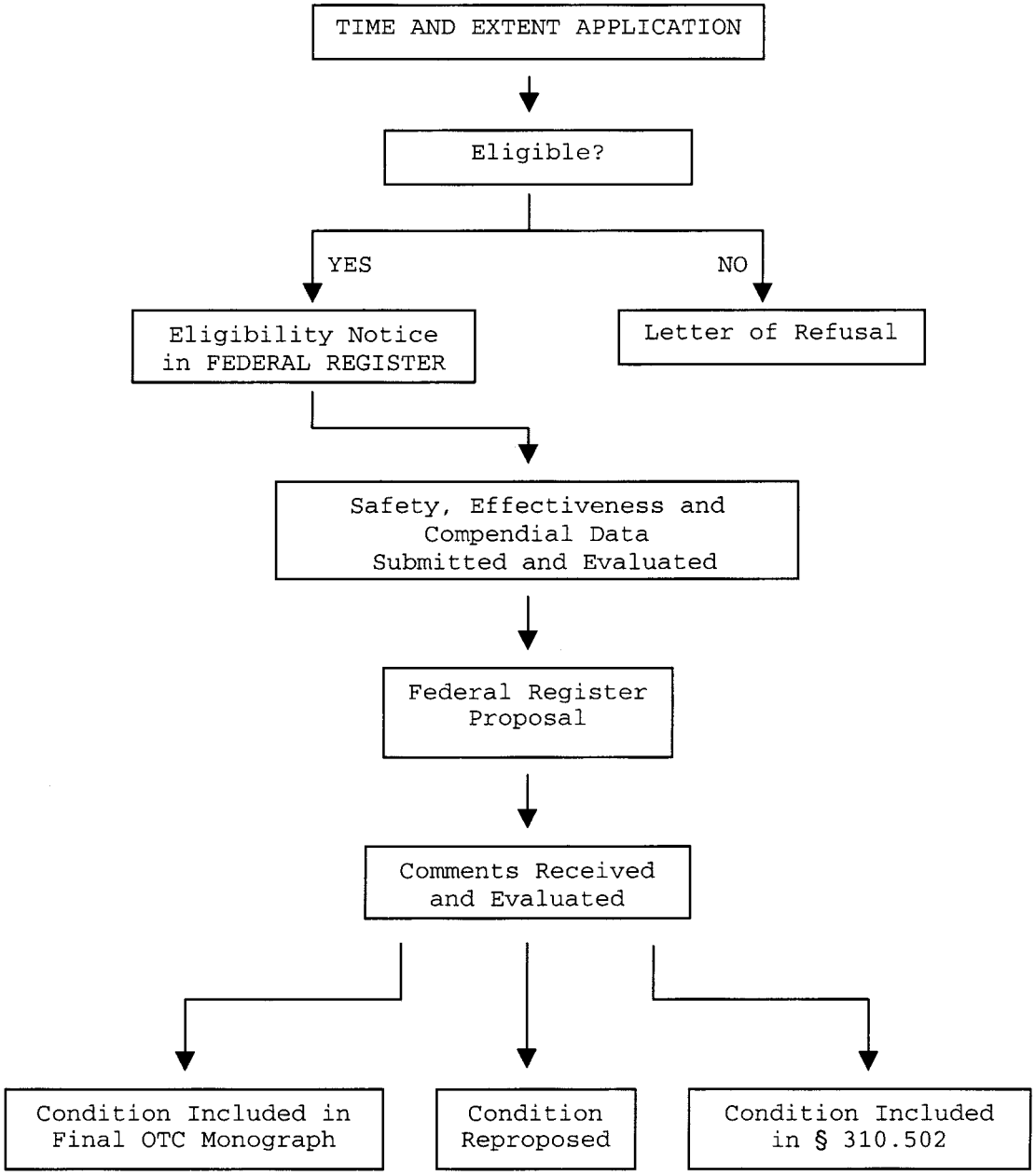
While the agency generally intends to use a two-step publication process for expediency, the agency may, in rare instances, elect to publish an advance notice of proposed rulemaking (three step process) when it needs to obtain additional public comment before determining whether to propose a regulation (see § 10.40(f)(3) (21 CFR 10.40(f)(3))).

The procedures for additional conditions in this proposal require that a compendial monograph exist for any ingredient included in an OTC drug monograph (a policy that has been in effect since 1989). Sponsors are encouraged to begin development of this compendial monograph at an early stage in the process. Therefore, the agency is proposing that sponsors include an official (if one exists) or proposed compendial monograph as an element of their safety and effectiveness data submission.

Once the agency publishes a proposal to amend or establish an OTC drug monograph to include a condition, it will then review the comments and publish a final rule (or reproposal if necessary) in the **Federal Register**. OTC marketing of the condition may begin when a final monograph is published.

The new procedures are outlined in the flow chart in Table 1 below.

TABLE 1.--PROPOSED NEW PROCEDURES IN § 330.14



These proposed new procedures are intended to streamline the process for additional conditions that will be evaluated. However, there are still some OTC drug rulemakings that need to be completed under the existing procedures.

Current § 330.10 sets forth the existing procedures for classifying OTC drugs as GRAS/E and not misbranded and for establishing monographs. FDA is proposing to amend § 330.10 to update some aspects of these procedures so that the existing procedures for the ongoing OTC drug review are consistent with the new proposed procedures.

The ''OTC Drug Review Information'' format and content requirements in § 330.10(a)(2) would be amended by revising items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 to add the words ''Identify expected or frequently reported side effects.'' after ''document case reports,'' and by adding new item VII to read:

VII. An official United States Pharmacopeia (USP)–National Formulary (NF) drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). Include information showing that the official or proposed compendial monograph for the active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance used in the studies establishing safety and effectiveness and with the active ingredient or botanical drug substance marketed in the OTC product(s) to a material extent and for a material time. If differences exist, explain why FDA is proposing these requirements for all conditions because this type of information will assist the agency in determining: (1) Appropriate warning statements, and (2) general recognition of safety and effectiveness by providing assurance that a proposed OTC active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance formulation in the marketed OTC product(s) and the active ingredient or botanical drug substance used in establishing safety and effectiveness.

Current § 330.10(a)(5) describes the contents of the advisory review panel report on conditions considered for inclusion in an OTC drug monograph. The report includes a statement of all active ingredients, labeling claims or other statements, or other conditions reviewed and excluded from the monograph on the basis of the panel's determination that they would result in the drug's not being GRAS/E or would result in misbranding. FDA is proposing to amend § 330.10(a)(5)(ii) and (a)(5)(iii) by deleting the requirement that a statement of ''all'' active ingredients, labeling claims or other statements, or other conditions be included. FDA is proposing this revision because the statement ''all'' refers to an initial panel's review of an entire class of OTC drugs for inclusion in the OTC drug monograph system. Under the new procedures proposed in § 330.14, the agency may at times only consider one or more conditions for inclusion into an appropriate OTC drug monograph(s).

Current § 330.10(a)(6)(i) on proposed monographs, (a)(7)(i) on tentative final monographs, and (a)(9) on final monographs describe requirements affecting a category of OTC drugs. FDA is proposing to revise these paragraphs to add a provision for a specific OTC ingredient or ingredients as well as categories of drugs. These paragraphs would be revised by deleting the word ''is'' and adding the phrase ''or a specific or specific OTC drugs are.'' FDA is proposing these revisions because the agency may at times only consider adding one or more conditions to a designated category of OTC drugs.

Current § 330.10(a)(6)(iv) and (a)(12)(i) state that four copies of public comments must be submitted on a proposed monograph published in the **Federal Register**. FDA is proposing to reduce the number of copies to three because the fourth copy has proven to be unnecessary. FDA is also proposing to delete the phrase ''during regular business hours'' in § 330.10(a)(6)(iv) and replace it with ''between the hours of 9 a.m. and 4 p.m.''

FDA is proposing to revise § 330.10(a)(6)(iv) to permit the agency to place the advisory review panel's recommendations and the data it considered on public display in the Dockets Management Branch and publish a notice of their availability in the **Federal Register**, rather than publishing the panel's proposed monograph in the **Federal Register** as an ANPRM. FDA is proposing this revision to make recommendations available earlier. FDA may include this notice of availability as part of the tentative order under § 330.10(a)(7).

Current § 330.10(a)(7)(i) states that after reviewing all comments, reply comments, and any new data and information, the Commissioner of Food and Drugs (the Commissioner) shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs is GRAS/E and not misbranded. FDA is proposing to add the phrase, ''or alternatively, after reviewing a panel's recommendations'' to allow the agency to publish a tentative order at an earlier date. FDA is also proposing to change the 60-day comment period in § 330.10(a)(7)(i), (a)(7)(ii), and (a)(12)(i) to 90 days because the agency currently routinely provides 90 days for comment at these stages of an OTC drug monograph rulemaking.

Current § 330.10(a)(7)(ii) describes procedures for issuing a tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being GRAS/E or would result in misbranding. Currently, the Commissioner may issue such an order if no substantive comments in opposition to the panel report or new data or information were received by the agency. FDA is proposing to also allow publication of a tentative order when the Commissioner has evaluated and concurs with a panel's recommendation that a condition be excluded from the monograph. FDA is proposing this change to add another procedural option that the agency may use to speed up completion of a rulemaking.

Current § 330.10(a)(10)(i) and (a)(10)(iii) establish procedures for responding to requests for data and information to create an administrative record for use in proceedings under this section. FDA is proposing to add a new procedure for the submission of data by inserting in § 330.10(a)(10)(i) ''in response to any other notice published in the **Federal Register**.'' FDA is proposing this change to allow the agency to request data and information by publishing a notice in the **Federal Register** in addition to the other procedures because the agency may at times only consider one or more conditions to add to a designated class of OTC drug products and may not have the data reviewed and evaluated by an advisory review panel. FDA is proposing to insert the same language in § 330.10(a)(10)(iii) to correspond with the change in § 330.10(a)(10)(i).

Current § 330.13 describes conditions for marketing ingredients recommended for OTC use under the OTC drug review. The agency is adding new paragraph (e) to § 330.13 to state that it applies only to conditions under consideration as part of the OTC drug review initiated on May 11, 1972, and evaluated under the procedures set forth in § 330.10. Section 330.14(h) will apply to the marketing of all conditions under consideration using the additional criteria and procedures set forth in § 330.14.

III. Comments on the ANPRM

Sixteen comments were submitted in response to the ANPRM. Those comments and the agency's responses are summarized below.

A. Comments Related to Eligibility Criteria

1. Several comments agreed that the countries listed under section 802(b)(1) of the act (21 U.S.C. 382(b)(1)) are appropriate for obtaining relevant OTC marketing experience because their regulatory systems are at a level of sophistication similar to the system in the United States. Other comments opposed limiting marketing experience solely to these countries. One comment considered limiting marketing experience from select countries listed in the act for other purposes to be arbitrary. Another comment contended that it is the quality of the information, not the source, that should be controlling. Several comments contended that the proposed eligibility criteria should not limit marketing experience to that derived from Western European cultures. The comments stated that if valid data are available from a foreign source to make a determination of safe and effective use, those data should be accepted for consideration into the OTC drug monograph system, regardless of the particular country or countries involved. One comment added that while marketing in the section 802(b)(1) of the act countries is usually well defined, marketing in Latin America and much of Asia is increasingly as sophisticated.

One comment suggested that any country adopting and using the International Conference on Harmonization (ICH) format, criteria, and guidelines for ADE reporting and premarketing approval (NDA) safety documentation be considered for inclusion into section 802(b)(1) of the act. Another comment suggested that if any new countries are added to section 802(b)(1) of the act, marketing from these countries should automatically become acceptable for obtaining relevant OTC marketing experience.

The agency believes that conditions with relevant OTC marketing experience in section 802(b)(1) of the act countries would be more likely to succeed in meeting the criteria for consideration in the OTC drug monograph system because the marketing experience would be more like that in the United States and because the regulatory systems in those countries are similar to those in the United States. Similar marketing experience and regulatory controls should provide the agency more comparable information on which to base decisions.

Nonetheless, at this time, the agency sees no reason to limit marketing experience solely to section 802(b)(1) of the act countries. If manufacturers can provide the type of data described in § 330.14(c) from any foreign country, the agency will consider these data in making an eligibility determination.

2. Several comments stated that foreign marketing experience from the class of nonprescription drugs sold only in a pharmacy, with or without the personal involvement of a pharmacist, should qualify as OTC marketing. The comments contended that such experience is analogous to OTC drug marketing in the United States and that ingredients such as aspirin, acetaminophen, benzoyl peroxide, doxylamine, ibuprofen, and loperamide, for example, are all restricted to pharmacy-only sales in Europe. Several comments noted that a number of countries restrict some or all nonprescription drug products to pharmacy-only sales. Some comments suggested that the agency is misguided in its understanding of how drugs are distributed abroad. One of the comments pointed out that the determination of channels of distribution for OTC drugs largely differs in various countries because of different medical and pharmaceutical traditions. Another comment noted that the class of nonprescription drugs distributed for pharmacy-only sale, with or without the personal involvement of a pharmacist, is used for economic and cultural reasons and has become a method of protecting pharmacy competition, not a method of enhancing the public health. Some comments noted that in countries where OTC drug products are restricted to sale in pharmacies, sale of a drug product rarely involves actual advice and counsel by a pharmacist. One comment contended that the words ''prescription,'' ''OTC,'' and ''third class of drugs'' may describe different concepts from country to country. The comment concluded that the agency should not exclude data on foreign marketing experience on the basis of such artificial categories.

The agency recognizes that a number of countries have a class of nonprescription drugs required to be sold only in pharmacies with or without the personal involvement of a pharmacist, and that the reasons for this class of drugs may vary from country to country. The agency is concerned when this restriction is deemed necessary because a particular country considers intervention by a health professional necessary. While the agency has determined that it will consider marketing experience from this class of pharmacy-only sales, the sponsor needs to establish that this marketing restriction in a particular country does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

3. A number of comments stated that foreign cosmetic marketing experience should be accepted to support eligibility of marketing to a material extent and for a material time if the products are marketed in the United States as OTC drugs. Several comments noted that many topical product categories, for example, sunscreen, antiperspirant, dental, antidandruff, hair growth stimulants, and skin protectants, are regulated as cosmetics in Europe but classified as drugs in the United States. Two comments added that direct-to-consumer marketing of cosmetic products in foreign countries is substantially indistinguishable from OTC drug marketing in the United States and should be acceptable to satisfy the material extent/time requirements. One comment stated that the agency should consider dietary supplement marketing histories during the safety and effectiveness determination process. One comment argued that the statutory language and legislative history of section 201(p)(2) of the act do not limit ''use to a material extent and for a material time'' to use solely from products regulated as OTC drugs. The comment concluded that such a regulatory limitation would be in excess of the agency's grant of authority under the act and, therefore, in violation of the Administrative Procedure Act (APA).

The agency is aware that certain conditions regulated as OTC drugs in the United States may be regulated differently (e.g., as cosmetics or dietary supplements) in foreign countries. The agency does not wish to exclude these OTC conditions from consideration for inclusion in the OTC drug monograph system simply because they are regulated differently in various countries. When making an eligibility determination, the agency will consider any OTC condition that would be regulated as an OTC drug in the United States.

4. Three comments maintained that the agency should recognize the low level of risk associated with topically applied foreign OTC products and have more moderate regulatory requirements for these products in order to accelerate their availability in accordance with public health care needs. One comment argued that 5 years of marketing to demonstrate material time for topically applied foreign OTC products should automatically qualify them to be

marketed to a material extent. Another comment requested priority for products regulated as cosmetics in Europe if a final rule is not forthcoming in the immediate future.

The agency disagrees with the comments' suggestions. The agency does not find that there is automatically a low level of risk associated with products just because they are applied topically. The agency has identified concerns with a number of topically applied OTC active ingredients (e.g., benzoyl peroxide, coal tar, diphenhydramine, hydroquinone). While these concerns have not prevented OTC marketing, they do not allow for more moderate regulatory requirements or accelerated consideration of these conditions. Similarly, marketing of a topically applied foreign OTC product for 5 years or more does not assure that it has been marketed to a material extent nor that problems may not arise or exist. Some of the problems encountered with benzoyl peroxide, diphenhydramine, and hydroquinone became apparent only after years of OTC marketing in the United States. Therefore, the agency sees no reason to give priority specifically to topical products.

5. One comment requested clarification regarding the nature of marketing experience, including: (1) Whether a condition marketed OTC in one or more foreign countries would be deemed ineligible because of prescription marketing in other foreign countries, and (2) the agency's statement that it is ''essential that any prescription drug have some U.S. marketing experience before its OTC marketing is permitted in this country'' under an OTC drug monograph. The comment was concerned that the agency intends to disqualify foreign prescription drugs from OTC marketing in the United States under an NDA.

The fact that a condition is prescription in some foreign countries and OTC in others does not preclude its consideration for OTC status in the United States. In order to be considered in the OTC drug monograph system under this proposal, a condition would have to be marketed for OTC purchase in at least one country for a material extent and to a material time. However, broad OTC marketing experience in many different ethnic, cultural, and racial populations would help ensure that an adequate safety profile exists. The agency is proposing to require that sponsors provide a list of all countries where the condition is marketed as a prescription drug and a description of the reasons why the condition is not marketed OTC in these countries. This information would enable the agency to notify sponsors beforehand if specific safety data may be required in order to demonstrate that a condition is appropriate for marketing in the United States under an OTC drug monograph.

Concerning the comment that the agency intends to exclude foreign prescription drugs from switching to OTC in the United States under an NDA, this rulemaking does not prohibit or otherwise affect submission of an NDA for OTC marketing of a foreign prescription drug.

6. A number of comments agreed with the proposed 5-year minimum requirement to satisfy marketing for a material time. Two comments urged that the 5-year minimum marketing period be used as a guideline and not as a rigid requirement. The comments believed that 5 years of marketing would often be unnecessarily long for a condition whose extent of distribution is substantial. One comment stated that it was Congress' intent that a combination of total exposure from breadth and length of marketing provide assurance that the product is suitable for old drug status. The comment concluded that a mandatory minimum marketing period could be overly restrictive, particularly for OTC products that are used for limited treatment periods. One comment believed that a condition should be evaluated on the basis of the quality of data rather than on an arbitrary minimum 5-year marketing standard.

The agency has determined that the condition must be marketed both for a sufficient time and to a sufficient extent to detect infrequent but serious ADE's. Based on its experience with post marketing surveillance spontaneous reporting systems, the agency proposes that a minimum of 5 years of OTC marketing experience should be required to provide an appropriate margin of safety to ensure that marketing is of sufficient duration to detect infrequent but serious ADE's that are occurring. Additional parameters will be used to assess whether a condition has been marketed to a material extent (see proposed § 330.14(c)(3)(ii), (c)(2)(iii), and (c)(2)(iv)).

7. A number of comments agreed with the six proposed factors for determining marketing to a material extent. These proposed factors were as follows: (1) Number of dosage units sold; (2) number and types of ADE reports, and the requirements of the reporting system; (3) risks and consequences associated with the therapeutic category and indication; (4) use pattern (frequency: Occasional, acute, chronic); (5) potential toxicity (including dosage form and route of administration); and (6) history of use (i.e., use indications and exposures, including their toxicities). One comment stated that the third and fourth factors should only be applicable if an ingredient has been used for an indication that is not currently covered by the OTC drug monograph system. The comment claimed that the agency has made these assessments for indications already included in OTC drug monographs. The comment also stated that the fifth and sixth factors should be combined into a single factor. The comment contended that the agency has no need to review potential toxicity issues because it will be able to review actual toxicity based on widespread historical use. The comment recommended the creation of an additional factor, ''other general safety information.'' The comment stated that this factor could include safety information other than ADE reports, such as prescription ADE reports and consumer complaints regarding safety issues.

The agency has determined that certain of these factors pertain more directly to an evaluation of safety than to the determination of material extent and has decided to remove them from the list of factors used to determine material extent. The number and types of ADE reports, the risks and consequences associated with the condition, and toxicity information will now be addressed as part of the safety evaluation under proposed § 330.14(f). The agency is including the number of dosage units sold, the description of the ADE reporting system, the use pattern, and the history of use as part of the material extent determination. The number of dosage units sold is necessary to demonstrate if the condition's extent of use is sufficient to detect infrequent but serious ADE's that are occurring. The description of the ADE system is necessary to assess the ability of the system to detect ADE reports. Use pattern is necessary to determine if a product's use is different in other countries than it would be in the United States. Use indications and exposures are important to determine the scope of the condition's use.

8. Several comments stated that section 201(p)(2) of the act provides that an ingredient be used to a material extent or for a material time. The comments contended that the agency misinterprets the statutory language by requiring that a condition be marketed for both a material extent and a material time. These comments suggested that sponsors be granted the alternative of either complying with the material

extent or the material time criterion. Another comment disagreed with the approach of material extent and material time being two distinct entities. The comment recommended that a formula be developed that considers marketing to a material extent over marketing for a material time in order not to exclude an important health care solution based on marketing time alone. Two comments suggested that if a condition could only meet either the material extent or the material time criterion, a more stringent requirement to establish either material extent or material time be employed to compensate for the condition not meeting both criteria (e.g., require 10 years to demonstrate marketing for a material time instead of 5 years).

Section 201(p) of the act defines ''new drug'' as:

(1) Any drug * * * the composition of which is such that such drug is not generally recognized, among [qualified] experts * * * as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling * * *; or

(2) Any drug * * * the composition of which is such that such drug * * * has become so recognized, but which has not * * * been used to a material extent or for a material time under such conditions.

Section 201(p) of the act establishes two general parts to the ''new drug'' definition, joined by the conjunction ''or,'' both of which must be satisfied to escape ''new drug'' status. Similarly, within section 201(p)(2) of the act there are two criteria joined by ''or,'' both of which must also be satisfied to escape ''new drug'' status. As one appellate court has explained: ''Stated another way, a drug is *not* a ''new drug,'' and is therefore exempt from regulation under section [505(a)], only if such drug both (1) is generally recognized, among [qualified] experts * * *, as safe and effective for its labeled purposes; *and* (2) has been used to a material extent and for a material time'' (*United States* v. *Atropine Sulfate*, 843 F.2d 860, 861–62 (5th Cir. 1988)). See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 660 (1973) (definition of ''new drug'' includes ''one that has not been used to a material extent and for a material time'').

This interpretation of section 201(p) of the act is also consistent with the Supreme Court's directive that the ''new drug'' definition must be liberally construed in order to effectuate the policy of the act to protect the public health and safety (*United States* v. *Article of Drug * * * Bacto-Unidisk*, 394 U.S. 784, 798 (1969)). Conversely, the situations in which a drug product is not a ''new drug'' are to be narrowly defined (*Premo Pharmaceutical Laboratories, Inc.* v. *United States*, 629 F.2d 795, 802 (2d Cir. 1980)).

Permitting a drug to drop out of regulation as a ''new drug'' without satisfying both the material time and the material extent prongs of section 201(p)(2) of the act would not satisfy the statute's underlying public health protection goal. For example, marketing a few units of a drug each year for many years would not provide enough information to ensure that infrequent but serious ADE's had been identified. Marketing many units of a drug for a very short period of time would be similarly inadequate to detect safety problems.

Accordingly, the agency disagrees with the comments. A condition that is considered ''not a new drug'' must satisfy both the material extent and the material time criteria in section 201(p)(2) of the act.

9. A number of comments suggested that the eligibility criteria should be flexible without rigid standards in specific areas. One comment contended that very specific criteria would reduce the eligibility of foreign marketing experience to an administrative effort, which would eliminate good judgment from the process. One comment contended that there should be no limitation on the type of marketing experiences that can be submitted. The comment added that sponsors should be permitted to provide evidence why the agency should consider certain marketing experience to be relevant. One comment stated that the agency should recognize that foreign marketing experiences may have many facets that are not necessarily less valid than those found in the United States. The comment contended that the eligibility criteria should be designed to equally and strictly apply to conditions that have been tested in a wide variety of foreign marketing experiences. The comment concluded that a rating system should be used, i.e., a low rating on one criterion could be compensated by a high rating on another criterion. Two comments suggested that the eligibility criteria be a guideline and not a rigid regulatory requirement. One comment requested the agency to provide specific eligibility criteria applicable to individual monographs rather than establish arbitrary criteria that may be irrelevant to particular categories of products.

The agency intends the proposed criteria and procedures to be a regulatory framework within which additional conditions will be evaluated for consideration in the OTC drug monograph system. The criteria are intended to be general in nature and to provide the agency flexibility and allow the use of judgment in evaluating eligibility requests. While any marketing experience can be submitted, sponsors will have to convince the agency that some experiences are relevant and appropriate, even though different from U.S. marketing experience. However, the agency intends to apply the criteria and use its judgment in specific situations. The agency may well use its judgment to balance a lower rating on some criteria with a higher rating on other criteria. The agency sees no need to provide specific eligibility criteria for each monograph. The agency considers the general criteria adequate and appropriate for all of the OTC drug monographs. In conclusion, the criteria and procedures provide a regulatory framework within which to apply judgment and be flexible as appropriate and necessary in considering additional conditions for inclusion in the OTC drug monograph system.

B. Comments Related to Safety and Effectiveness Evaluation

10. A number of comments recognized the usefulness of assessing ADE's that have occurred during marketing as an important element in assessing the safety of a condition. Some comments added that the existence of an ADE reporting system in a foreign country is a factor in evaluating the relevance of the marketing experience, while several comments suggested that the absence of a mandatory ADE reporting system should not preclude a condition from being eligible in the OTC drug monograph system. Several comments argued that the absence of a mandatory ADE reporting system should not be determinative of safety, but should be only one factor when determining eligibility. Two comments stated that it is the reliability and scope of the ADE data collection system that is important, not the form of availability. Several comments noted that there is no mandatory ADE reporting system currently in place for OTC drug products in the United States and the OTC drug monograph system currently includes hundreds of ingredients that have never been subject to mandatory ADE reporting. One comment added that over a period exceeding 5 years, even in the absence of a mandatory reporting system, serious safety problems would be identified in European and other countries with adequate regulatory oversight and sophisticated health care systems. The comment stated that literature reports of experience in hospitals, poison control centers, clinical studies, etc., and data from voluntary reporting channels

provide a mechanism for gathering sufficient information to determine whether a serious safety problem exists. Several comments suggested that mandatory ADE requirements for foreign marketed conditions would establish a dual standard, with a more rigorous standard for evidence of safety being placed on foreign marketed conditions than exists for U.S. OTC drug products.

One comment mentioned that many U.S. OTC drug products are regulated as cosmetics or dietary supplements in other countries and would not be subject to ADE reporting requirements. Another comment suggested that the agency should assess foreign ADE reporting systems only after it has defined the parameters for a suitable OTC ADE reporting system in the United States. Another comment suggested listing elements of ADE reporting systems in order to generate an overall rating of each country's monitoring system. Two comments stated that it is unrealistic and unnecessary for the agency to require ADE reports from every country where an ingredient is marketed. One comment requested clarification of the term ''important'' ADE. One comment claimed that due to sporadic or sparse marketing, not every country will provide useful data. The other comment noted that some companies market products in more than 100 countries and should only concentrate on sophisticated countries with OTC sales. The comment supported a requirement that sponsors provide all relevant and significant ADE's of which they are aware. The comment noted, however, that in most countries, a company is not authorized to obtain ADE reports for a competitor's product.

One comment stated that the agency should only request ADE reports associated with nonprescription drug marketing. Another comment maintained that when the dosages are similar between prescription and OTC drug uses, priority should be given to the collection of OTC ADE reports. One comment stated that a contradiction exists between the agency's acceptance of foreign prescription drugs' ADE reports and the agency's belief that foreign marketing as a prescription drug should not be part of the criteria for determining material extent and material time.

The agency considers ADE information to be crucial in assessing the safety of a condition for inclusion in an OTC drug monograph. The agency acknowledges that a mandatory ADE reporting system for monographed OTC drug products is currently not in place in the United States, but the agency plans to propose the creation of such a system in the near future. The agency is also aware that such a system does not exist in many industrialized countries. Nonetheless, many countries have a drug marketing approval process and a postmarketing surveillance system that can identify ADE's. The system that exists needs to detect ADE's that are occurring, i.e., both: (1) Serious ADE's and (2) expected or frequently reported side effects for the condition. This information enables the agency to assess the risks of using the condition OTC and to label the product informatively for consumers.

As one comment mentioned, literature reports on experiences in hospitals, poison control centers, clinical studies, and other similar settings, plus data from voluntary reporting channels, provide information for assessing a condition's safety. It will be the sponsor's burden to provide this information to the agency to support OTC safety. The agency points out that this type of information is similar to the information manufacturers have routinely been requested to submit for drugs evaluated under the OTC drug review. Safety information under the OTC drug review procedures (§ 330.10(a)(2)) includes controlled studies, documented case reports, pertinent marketing experiences that may influence a determination as to the safety of each individual active ingredient, and pertinent medical and scientific literature. Thus, this type of information is routinely considered as part of the condition's safety evaluation.

The agency also considers it very important to have this ADE information provided from every country where the condition is marketed. This information will be helpful to address some of the ethnic, cultural, and racial variances that may exist among users as well as to provide a broad marketing background more relevant to the U.S. population. The agency considers this information useful even from countries with sporadic or sparse marketing, or where the condition has been withdrawn. Therefore, the agency is requiring that sponsors include all of this marketing experience as relevant information of which they are aware. This requirement applies equally to conditions regulated as cosmetics or dietary supplements in foreign countries, but which would be regulated as OTC drug products in the United States. If there is no mandatory ADE reporting system for such products in the foreign country, the sponsor can still provide information from the scientific literature and information obtained from voluntary reporting channels. This would also include such information for a competitor's product if available in the scientific literature or other public sources (e.g., news articles, press releases).

The agency believes that prescription as well as OTC ADE reports for the condition should be evaluated. Prescription ADE reports may provide useful information to evaluate safety for U.S. marketing under an OTC drug monograph. In addition, ADE reports associated with the other doses (higher or lower) or different indications associated with the product marketed as a prescription drug would be useful for assessing the safety margin for OTC use. The agency finds no contradiction in requesting prescription ADE reports for this purpose.

The agency sees no benefit in trying to rate each country's monitoring system. As one comment noted, the reliability and scope of the data are the important factor. Nor does the agency see a need to wait until its OTC ADE reporting system for monographed OTC drugs is fully defined. The type of ADE information the agency is requiring is similar to the information manufacturers have routinely been requested to submit for drugs evaluated under the OTC drug review.

The agency concludes that ADE information is a critical factor in assessing the safety of a condition for inclusion in an OTC drug monograph. However, the agency believes that ADE reports are more appropriate as part of the assessment of safety, rather than as part of establishing eligibility. The agency is proposing new § 330.14(f)(2) to require the submission of the following: (1) All serious ADE's, as defined in §§ 310.305 and 314.80, as elements of required ADE reporting to support a foreign condition's safety, and (2) expected or frequently reported side effects that may be important for consumer product labeling.

11. Several comments objected to the agency's position that foreign marketing exposure would have to be described sufficiently to ensure that the condition can be reasonably extrapolated to the U.S. population. Some comments contended that, because the United States has a wide range of ethnic, cultural, racial, and foreign populations comparable to many countries, it is improper and unjustified to emphasize the comparability of foreign and U.S. populations as a determinate factor. One comment noted that it is usually assumed (absent unusual circumstances) that any drug, whether marketed in the United States under an NDA or OTC drug monograph, is suitable for use by the entire population.

Several comments added that the agency has never solicited race, gender, or ethnicity marketing information for a condition in the OTC drug review, nor is there a requirement under an NDA for testing a condition in any particular demographic group. One comment suggested that for the agency to determine that foreign products in general and European products in particular present some significant cultural risk would be an unlawful nontariff trade barrier in violation of the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA). Another comment mentioned that marketing in Latin America and much of Asia is also very relevant. Two comments stated that they would support less rigid requirements. One of these comments supported a requirement that companies disclose any concerns they are aware of regarding medical, cultural, or genetic issues.

The agency recognizes that the United States has a wide range of ethnic, cultural, racial, and foreign populations. The agency believes that when a condition is included in an OTC drug monograph, there should have been broad OTC marketing experience in many different ethnic, cultural, and racial populations to assure that a sufficient profile of the condition exists. For example, a sunscreen drug product with a marketing history only in a Latin American country may not have a sufficient marketing history to allow extrapolation to the full range of skin types of the U.S. population. Likewise, an antacid, cholesterol lowering drug, or vaginal contraceptive with marketing experience only in an Asian country may not have a sufficient profile for extrapolation to the entire U.S. population because of dietary and cultural differences between the countries' populations.

While the agency may not routinely solicit race, gender, or ethnicity ''marketing'' information for a drug in the OTC drug review, the agency considers this one of the parameters that appropriately can be assessed to evaluate material extent. The agency has considered this parameter in developing certain OTC drug monographs. For example, issues related to unique racial characteristics have arisen in considering OTC skin bleaching drug products. In evaluating a protocol for a plaster dosage form containing counterirritant ingredients, which had a marketing history primarily in an Asian population, the agency informed the manufacturer that skin from subjects with different ethnic backgrounds should be studied. The agency stated that as much data as possible was needed to provide support for the product, and the protocol should include a diverse population regarding age, sex, and race (Ref. 1).

In conclusion, the agency considers it important that OTC foreign marketing experience be relevant to populations targeted for marketing in the United States. Therefore, the agency is requiring that, as part of the TEA, sponsors sufficiently describe the condition's foreign marketing experience to fully support extrapolation to U.S.-targeted populations. Sponsors may use the categories and definitions in The Office of Management and Budget's **Federal Register** notice, titled ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity.'' The notice identifies six combined racial and ethnic categories (1. American Indian or Alaska Native, 2. Asian, 3. Black or African American, 4. Hispanic or Latino, 5. Native Hawaiian or Other Pacific Islander, and 6. White (62 FR 58781, October 30, 1997)).

C. Comments on Administrative Procedures

12. Several comments supported the agency's proposed two-step application process. One comment requested clarification on several aspects of the process: (1) Who within the agency would be responsible for reviewing the eligibility submission, (2) the content and format for eligibility and data submissions, and (3) the agency's regulatory timeline for reviewing submissions. Several comments requested the agency to establish regulatory timelines for each step of the review process. Three comments recommended that the agency establish a 90-day time period for the review of eligibility data. Two comments requested that this time period be 120 days. Three comments recommended that the agency establish a 1-year timeline for reviewing safety and efficacy data. Two comments requested that, within the review periods, the agency give regulatory priority to conditions that uniquely meet Americans' health needs.

The agency's Division of OTC Drug Products will be responsible for evaluating all TEA's. The agency does not anticipate establishing specific timelines for the review of the TEA or data submissions for safety and effectiveness due to differences that may exist in the quantity and quality of submissions. The agency is concerned that, in the initial period of time following the publication of a final rule, there may be substantial numbers of submissions that will require handling and evaluation by the agency. The agency considers it desirable to implement procedures that will streamline this process to ensure that agency resources are used appropriately and result in timely action on submissions.

In reviewing data submissions on safety and effectiveness, the agency intends to use both internal and external resources, as appropriate. The agency may request submission of data and information for conditions in specific pharmacological classes (e.g., drug categories listed in § 330.5) and/or certain indications during specified time periods so that an entire class of conditions (e.g., foreign sunscreen ingredients) can be reviewed at one time. The agency believes that there may be other options for streamlining this review process and invites specific comments on these matters.

13. One comment urged the agency to combine its two-step application process into one unified process. The comment contended that each of the two steps involves consideration of the same information and, therefore, should be combined. The comment concluded that a two-step application process would take twice as long as a single simplified process. One comment objected that the agency had not sufficiently distinguished between the eligibility of drug conditions for inclusion in the OTC drug monograph system and the evaluation of whether such conditions are GRAS/E. The comment argued that the initial eligibility determination should not intrude on the separate safety and effectiveness evaluation.

Another comment contended that FDA's proposed eligibility process is inconsistent with the statutory language of section 201(p) of the act. The comment argued that section 201(p)(1) and (p)(2) of the act provides two independent criteria for finding that a product is not a new drug, but that the agency's proposal makes the material extent and material time criteria of section 201(p)(2) of the act part of the safety and effectiveness requirement of section 201(p)(1) of the act. The comment added that FDA's proposal prevents separate and independent consideration by interpreting the material extent and material time requirements to be evaluated by data that relate properly to the safety of the product. The comment contended that FDA's proposed procedure uses the material extent and material time requirement as an initial screen to exclude drugs from the OTC drug monograph system. The comment

contended that this interpretation of the act is unsupported by the plain language, judicial interpretations, or legislative history of the act, and the agency's past and current OTC drug review practices. The comment concluded that the agency's approach results in arbitrary and capricious action under the APA (5 U.S.C. 706(2)(A)).

The agency believes that a two-step application process is the most efficient and appropriate method for it to determine whether a condition is acceptable for inclusion in the OTC drug monograph system. The agency is proposing this two-step approach to: (1) Prevent sponsors from incurring unnecessary costs for developing safety and effectiveness data for a condition that may not meet basic eligibility requirements, (2) avoid expending agency resources evaluating safety and effectiveness data for a condition that does not meet the basic eligibility criteria, and (3) provide all interested parties an opportunity to submit safety and effectiveness data and information.

Based on the comments and a consideration of the options raised in the ANPRM, the agency has decided that a number of the criteria initially proposed as part of an eligibility determination should now be part of the safety determination (see section III.A, comment 8 of this document). The agency believes that this approach would provide for a separate and expedited consideration of both elements and would not result in a protracted process.

14. One comment requested that the agency make all positive eligibility determinations publicly available so that all interested parties would have a chance to submit safety and effectiveness data and information.

The agency agrees with this comment. If the condition is found eligible, the agency will publish a notice of eligibility in the **Federal Register** and provide the sponsor and other interested parties an opportunity to submit data to demonstrate safety and effectiveness.

15. Two comments stated that once the agency determines that a condition is GRAS/E, it should be incorporated into a new or existing monograph by the proposed rule/final rule publication procedure in the **Federal Register**. One comment contended that the original three-step publication procedure (i.e., advance notice of proposed rulemaking, tentative final monograph, final monograph) used in the OTC drug review is no longer justified due to the absence of advisory review panels. The comment concluded that in this case where FDA would be making a safety and effectiveness determination, a two-step procedure would be sufficient and appropriate.

The agency generally agrees with the comments that the original three-step publication process is no longer needed to make a determination that an additional condition being added to the OTC drug monograph system is GRAS/E. However, the agency may use outside experts as part of the review process. These experts could review the safety and effectiveness data and provide recommendations to the agency. The agency will make those independent recommendations public by placing them in the docket, evaluate the data and recommendations, and then publish a notice in the **Federal Register**. The agency may elect to expedite the review process by evaluating the data in conjunction with the advisory review panel or outside experts. If the agency concurs with the experts' recommendations to include a condition in a monograph, the agency will publish a notice of proposed rulemaking to amend an existing monograph(s) or create a new monograph(s).

If the agency agrees with the experts' recommendation not to include a condition in a monograph, it will inform interested parties by letter and place a copy in the Dockets Management Branch. Subsequently, the agency will publish a notice of proposed rulemaking in the **Federal Register** providing a summary of the experts' recommendations and proposing to include the condition in § 310.502. The agency will provide interested parties an opportunity to submit comments and new data, and will subsequently publish a final rule in the **Federal Register**.

In conclusion, the agency generally intends to use a two-step publication process for conditions that are evaluated under this notice. However, the agency may elect to publish an ANPRM to obtain public comment before publishing an actual notice of proposed rulemaking (see § 10.40(f)(3)).

D. Comments on Marketing Policy

16. Several comments objected to the agency's proposed marketing policy. The comments stated that interim marketing should be authorized after the agency determines a condition is eligible for consideration in the OTC drug monograph system. One comment contended that similar standards in the ''rush to market rule,'' codified in § 330.13, should apply for foreign OTC drugs and products. The comment noted that this rule allowed OTC drug ingredients that were lawfully marketed before May 11, 1972, in the United States to be marketed prior to a final evaluation by the agency. Two comments contended that the agency's proposed marketing policy was inconsistent with its current policy permitting the marketing of Category III (more safety and/or effectiveness data needed) conditions that have insufficient evidence of safety or effectiveness. Two comments stated that the agency's proposed marketing policy was inconsistent with its initiatives to harmonize drug regulations by creating an unfavorable bias towards foreign products. Two comments argued that by accepting 5 years of marketing experience from countries listed in the Export Reform Act of 1996 (Public Law 104–134), the agency should trust that the exposure to unnecessary risk would be minimal, thereby alleviating the need for a different interim marketing policy for foreign products. One comment disagreed with the agency statement that allowing any condition to be marketed before it was evaluated for safety and effectiveness would subject the public to ''unnecessary risk.'' The comment contended that the minimum level of risk for many products, in particular topical and sunscreen drug products, does not support a blanket prohibition of interim marketing based on risk. The comment argued that there is no scientific or legal justification for such an approach. The comment noted that skin cancer is a serious and growing health problem, and risks of keeping new sunscreen products from the American public outweigh the risk of making them available. The comment recommended that the agency adopt a more flexible interim marketing policy that recognizes the low-level risks of certain therapeutic categories/conditions.

The agency's proposed marketing policy in § 330.14(h) would allow marketing only after a condition is included in an applicable final OTC drug monograph(s). Many of the conditions that may be submitted will not have been marketed previously to the U.S. population. Therefore, the agency considers it important that there be thorough public consideration of any safety and effectiveness issues that might arise before marketing begins. Interested parties and persons with specific knowledge about the condition may offer useful comments and suggestions regarding the OTC marketing of the condition. If there are controversial issues regarding OTC status, the agency does not want interim marketing to occur while these issues are being resolved. If there are no controversial issues, then the period of time between the proposal and the final

rule to add a condition to a monograph will generally be short.

For reasons stated above, the agency is not using the marketing policy in §§ 330.13 and 330.10(a)(6)(iv) (Category III conditions) for additional conditions to be considered for inclusion in the OTC drug monograph system. These sections were intended to apply to active ingredients marketed in the United States prior to the beginning of the OTC drug review. The current proposal applies to OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience.

The agency acknowledges that some ingredients may have what some people consider a minimal level of risk. As discussed earlier, many topical conditions raise concerns that require agency evaluation before marketing may begin. In some cases, special conditions (e.g., label warnings) may be necessary for marketing. In the case of sunscreens, the agency has evaluated substantial safety data (e.g., primary irritation potential, phototoxicity, photosensitization) before proposing several sunscreen ingredients for inclusion in the sunscreen monograph. Thus, the agency has determined that topical and sunscreen drug products should not qualify for a different status based on the nature of the products.

E. Comments on Compendial Monograph Requirements

17. Several comments stated that the agency should recognize all national and international compendia. One comment interpreted ''official compendia'' to mean not only the USP, but also the European Pharmacopeia and pharmacopeias from the export countries identified in section 802(b)(1) of the act. Another comment expressed concern that the USP may be delayed in establishing herbal monographs due to the chemical complexity of plant ingredients. The comment suggested that the agency accept a compendial monograph from the European Pharmacopeia or pharmacopeias from the export countries as long as the development of a USP monograph is being pursued. One comment stated that requiring only single ingredients to be recognized in an official compendium would be too narrow an approach.

The proposed rule would require an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). These compendia recognize monographs for both single ingredient and botanical products where appropriate. Although the USP–NF does not presently recognize foreign compendial monographs, it does review foreign compendial monographs on a case-by-case basis to determine if they can be used in developing a USP–NF monograph. However, the agency would not recognize a foreign compendial monograph until USP–NF determined it was acceptable and incorporated it into an official drug monograph.

The USP–NF is currently taking steps to facilitate international commerce and product registrations. USP–NF recently proposed a new general chapter 13, ''Concordance of Foreign Pharmacopeial Tests and Assays'' (Ref. 2). This chapter would allow alternative tests and assays established by the European Pharmacopeia and the Pharmacopeia of Japan to demonstrate that an article meets USP standards. As international harmonization progresses, USP states that it will also consider the applicability of other pharmacopeias. The agency notes that while the USP proposal rests on a presumption that articles of acceptable quality can emerge where they are produced in accordance with recognized principles of good manufacturing practice and foreign official methods of analysis, USP requires that its General Committee of Revision examine each test or assay with a view to acceptable concordance with the USP test or assay. USP also cautions that these individual determinations of concordance are made solely and independently by USP; no corresponding provision or lack thereof by another pharmacopeia is to be presumed (Ref. 2).

18. Two comments objected to the agency's requirement that a USP monograph be in place before FDA allows any interim marketing. The comments stated that a USP monograph should be in place at the time an OTC drug final monograph is completed.

As discussed in section III.D, comment 16 of this document, the agency is not proposing to allow any interim marketing. The agency agrees that a compendial monograph should be in place when an ingredient is included in a final monograph. It has been agency policy since April 3, 1989 (54 FR 13480 at 13486) that before any ingredient is included in a final OTC drug monograph, it must have a compendial monograph. That monograph sets forth the identity, strength, quality, and purity of the drug substance and drug products made from the drug substance and would include, for example, specifications relating to stability, sterility, particle size, crystalline form, and analytical methods. If necessary, the agency will require additional compendial standard criteria in the OTC drug final monograph based on the data that support generally recognized safe and effective status. A compendial monograph helps ensure that OTC drug products contain ingredients that are equivalent to active ingredients or botanical drug substance(s) included in OTC drug monographs. This requirement will also encourage interested sponsors to work with USP to develop a compendial monograph as expeditiously as possible.

F. General Comments

19. One comment urged the agency to issue a final rule, rather than a proposed rule, as the next step in this rulemaking. The comment stated that there had been a considerable delay since it submitted its petition, and contended there is no legal requirement or administrative need for FDA to first issue a proposed rule. The comment concluded that if FDA issues a proposed rule, it should provide a 60-day comment period and issue a final rule within 120 days. Another comment urged the agency to move forward promptly on this rulemaking and to begin accepting petitions for additional conditions in the OTC drug monograph system upon publication of the proposed rule.

The agency disagrees with the comments' suggestions. In order to solicit a broad range of comments on the approach FDA was considering on eligibility for consideration under the OTC drug monograph system, the agency published an ANPRM. Under the agency's procedural regulations in § 10.40(f)(3), FDA may publish an ANPRM to request information and views on a matter from the public before it decides to publish a proposed rule. Having considered the comments submitted in response to this ANPRM, the agency believes it is now appropriate to propose specific revisions to the codified text of its current OTC drug monograph system regulations and to solicit comments on these specific revisions. The agency is providing a 90-day comment period, rather than the 60 days as suggested by the comment, because it anticipates that most interested parties will want a longer period of time to respond to the criteria and procedures proposed in this document, and the agency wishes to avoid requests for an extension of the comment period.

The agency also disagrees that it would be efficient to begin accepting petitions for additional conditions upon publication of the proposed rule. FDA's consideration of the comments in response to this proposed rule may result in changes to the proposed requirements. Encouraging submissions following the proposal before the final

rule issues may result in considerable wasted and inefficient efforts by sponsors and by agency employees. The agency intends to move expeditiously to consider the comments and develop a final rule after the close of the comment period.

20. One comment requested clarification whether the final regulation would apply to the review of any condition proposed for inclusion in a final, pending, or newly proposed OTC drug monograph. The comment stated that this approach would ensure that a condition currently being considered for inclusion in an OTC drug monograph will be reviewed by the same standards as a condition reviewed after finalization of the proposed rulemaking. Another comment asked the agency to confirm that it will consider ingredients marketed in foreign countries for OTC indications that are not currently covered by existing OTC drug monographs.

This rulemaking addresses how OTC marketing experience in the United States or other countries could be used to qualify additional conditions for consideration under the OTC drug monograph system. Once found eligible, whether for a final, pending, or newly proposed OTC drug monograph, the condition will be reviewed using the same OTC drug standards in § 330.10(a)(4) that have been used throughout the OTC drug review process. The agency has included such a provision in proposed § 330.14(g). Conditions not covered by existing OTC drug monographs will be considered under this proposal.

21. One comment noted that the agency did not differentiate between the various dosage forms under its definition of ''conditions.'' The comment stated that it interpreted ''dosage form'' to mean that immediate-release, solid oral dosage forms (e.g., tablets) and liquid oral dosage forms (e.g., drops or syrups) were grouped together, with no further differentiation being made. Another comment contended that if an ingredient intended for oral ingestion is approved for marketing, manufacturers should be able to include the ingredient in a variety of oral, immediate-release dosage forms, such as, tablets, capsules, or liquids. The comment added that the same principle should apply to topical ingredients. The comment mentioned that when the agency evaluates ingredient eligibility, it should not require 5 years of marketing for each dosage form.

Most OTC drug monographs do not limit the dosage forms for listed ingredients. One exception is timed-release formulations. These products are regulated as new drugs under § 310.502(a)(14). In some cases, there are other reasons to limit allowable dosage forms or dosage forms that have specific requirements. For example, the agency discussed dosage forms (vehicles) for topical drug products when it amended the external analgesic tentative final monograph to include 1 percent hydrocortisone (55 FR 6932 at 6947 and 6948, February 27, 1990). The agency expressed concerns about 1 percent hydrocortisone being incorporated into a dosage form that would increase absorption through the skin, thus creating the possibility of an increased safety risk.

While most OTC drug monographs will not limit dosage forms, there may be specific situations where it is necessary to require 5 years of marketing experience for a novel or special dosage form.

IV. Legal Authority

FDA's proposal to amend its regulations to include criteria for additional conditions and procedures for classifying OTC drugs as GRAS/E and not misbranded is authorized by the act. Since the passage of the act in 1938, submission of an NDA has been required before marketing a new drug (section 505 of the act (21 U.S.C. 355)). Section 201(p) of the act defines a new drug as:

> (1) Any drug * * * the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, * * *; or
>
> (2) Any drug * * * the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

To market a new drug, an NDA must be submitted to, and approved by, FDA before marketing. Only drugs that are not new drugs may be covered by an OTC drug monograph. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act. Under part 330, FDA's regulations outline the requirements for OTC human drugs that are GRAS/E and not misbranded. Proposed § 330.14 adds additional requirements.

V. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**. After that date, the agency will begin accepting TEA's.

VI. Requests for Comments

Interested persons may, on or before March 22, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the information collection requirements may, on or before January 19, 2000, be submitted by interested persons to the Office of Information and Regulatory Affairs, OMB (address above). Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Written comments received regarding this proposal may be seen by interested persons in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity). Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this rule is consistent with the pronciples set out in the Executive Order and in these two statutes. OMB has determined that the proposed rule is a significant regulatory action as defined by the Executive Order and so is subject to review. Because this rule does not impose any mandates on

State, local, or tribal governments, it is not a significant regulatory action under the Unfunded Mandates Reform Act. Although the agency does not believe that this rule will have a significant economic impact on a substantial number of small entities, there is some uncertainty with respect to the estimated future impact. Thus, a regulatory flexibility analysis is presented below.

A. Regulatory Benefits

The purpose of the proposed rule is to establish criteria and procedures for classifying OTC drugs as GRAS/E and not misbranded. Currently, a sponsor wishing to introduce into the United States an OTC drug condition marketed solely in a foreign country must prepare and submit an NDA. Likewise, companies with OTC drugs initially marketed in the United States after the 1972 initiation of the OTC drug review must have an NDA. This proposed rule provides procedures for these NDA drugs to become eligible for inclusion in the OTC drug monograph system by first submitting a TEA to show marketing ''to a material extent'' and ''for a material time.'' Once determined eligible, safety and effective data would be submitted and evaluated. The agency is proposing the two-step process to allow sponsors to demonstrate that eligibility criteria are met prior to requiring the expenditure of resources to prepare safety and effectiveness data.

The flexibility to obtain U.S. marketing approval through FDA's OTC drug monograph system will provide an overall net benefit to the companies seeking these approvals, as well as to the American public. One important benefit to sponsoring companies would be the saving of NDA user fees. The Prescription Drug User Fee Act (section 736 of the act (21 U.S.C. 379h)) requires a one-time application fee for each NDA submitted, and yearly product and establishment fees, as applicable, for each NDA approved. In 1998, these fees were $256,846 (applications with clinical data), $18,591, and $141,966 respectively. Therefore, one-time user fees of $256,846, and ongoing fees of up to $160,557 ($18,591 + $141,966) would be avoided if the company can establish that the condition should be included in an OTC drug monograph.

Also, most manufacturers would experience a paperwork savings when applying for OTC drug monograph status instead of an NDA. For example, in most instances, the manufacturing controls information needed for submitting an NDA will not be required for a monograph submission. Ongoing recordkeeping and reporting requirements associated with periodic and annual reports would also be avoided. Based on previous estimates of the paperwork hours needed to comply with these requirements and assuming a 33 percent reduction in paperwork activities, FDA estimates that eliminating manufacturing controls information from an application would bring a one-time savings of approximately 530 hours and an annual savings of 40 hours per submission. Applying the 1995 labor rate of $29.50 per hour for an industrial engineer (Ref. 3) (with a 40 percent adjustment for benefits), these one-time savings are approximately $15,635 (530 x $29.50/hour) per submission. Likewise, using the 1995 professional and managerial labor rate of $24.60 per hour (Ref. 3) (including a 40 percent benefit rate), the ongoing savings from the elimination of periodic and annual reports would equal approximately $984 (40 x $24.60/hour) per product.

Moreover, once a condition has been included in an OTC drug monograph, other companies could achieve similar benefits, as they would be permitted to enter the marketplace without submitting an NDA or an abbreviated NDA (ANDA), hereafter referred to as an application. These companies would even avoid the costs associated with achieving the inclusion of a condition in a monograph. In addition, these companies, as well as the sponsoring companies, would be permitted to market variations of a product, such as different product concentrations or dosage forms, if allowed by the monograph, saving the cost of an application or supplement when required.

Consumers would also benefit from this rule. As conditions not previously marketed in the United States obtain OTC drug monograph status, a greater selection of OTC drug products would become available. In addition, competition from these additional products may restrain prices for the entire product class.

B. Regulatory Costs

FDA estimates that the information needed for a TEA to meet the eligibility criteria for ''material time'' and ''material extent'' would take firms approximately 480 hours to prepare. Using the 1995 professional and managerial labor rate of $24.60 per hour (Ref. 3) (including a 40 percent benefit rate), this cost amounts to approximately $12,000 (480 hours x $24.60/hour) per submission. The costs associated with requiring publication in an official compendium, where applicable, would be minimal as similar information is often prepared for publication in a foreign pharmacopeia and most companies already have such standards as part of their manufacturing quality control procedures.

Considering the potential one-time cost savings described above of $272,481 ($256,846 + $15,635) associated with prescription drug user fees and reduced recordkeeping requirements, FDA calculates a one-time net cost savings to industry of up to $260,481 ($272,481 – $12,000) per submission. Future yearly cost savings could total $19,575 ($18,591 + $984) per product and $141,966 per establishment if this were the establishment's only product. Accordingly, if FDA receives 25 to 50 TEA submissions a year, the industry would save between $8.2 million and $16.4 million in one-time costs alone. The agency notes, however, that companies would submit conditions for OTC drug monograph status only where it would be profitable for them to do so.

There are several situations, however, where the rule may result in lost sales for some future applicants. Since 1991, FDA has approved a total of six requests for the inclusion of post-1972 U.S. OTC drug conditions in a monograph. The sponsors requested permission to market these conditions before the issuance of a final monograph, and FDA granted these requests. Several other requests are currently under agency review. This proposed rule, however, would not permit interim marketing for post-1972 conditions without an application or without inclusion of the condition in a final monograph. Therefore, this rule could result in lost sales dollars for those few manufacturers who, in the absence of this rule, might have successfully petitioned FDA to market a variation of their product prior to publication in a final monograph. Likewise, other manufacturers might experience some future lost sales dollars because they also would be restricted from marketing the product or a product variation. Although the agency cannot estimate the value of these lost sales, the limited number of requests approved to date implies that very few manufacturers would be adversely affected by this interim marketing change. Moreover, because FDA expects a short period of time between a proposal to add a condition to a monograph and the final rule, any lost sales would occur over a limited timespan.

Four of the six requests approved since 1991 involved a previously unapproved concentration, dosage form, dual claim, and product combination without OTC marketing experience.

Similar conditions would not be allowed under the proposed rule without a minimum of 5 continuous years of adequate OTC marketing experience. Therefore, these manufacturers would need to either market their product under an application for 5 years in the United States or have 5 years of sufficient marketing experience abroad to qualify for inclusion in a monograph. Other manufacturers would have to wait until the condition is included in a final monograph publication before they could market the product or a product variation without an application. Due to the limited number of requests approved to date, it is likely that few manufacturers would be significantly affected by these requirements.

C. Small Business Analysis

Although the agency believes that this rule is unlikely to have a significant economic impact on a substantial number of small entities, FDA is uncertain about the extent of the future impact. Therefore, the following regulatory flexibility analysis has been prepared:

1. Description and Objective of the Proposed Rule

As stated elsewhere in this preamble, the proposed rule would make it easier to market certain OTC drug products in the United States by amending current FDA regulations to include additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The additional criteria and procedures would specify how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience could meet the monograph eligibility requirements. Once eligibility has been determined for a particular condition, safety and effectiveness data would be evaluated.

2. Description and Estimate of the Number of Small Entities

Census data provide aggregate industry statistics on the number of manufacturers of pharmaceutical preparations, but do not distinguish between manufacturers of prescription and OTC products. According to the Small Business Administration (SBA), manufacturers of pharmaceutical preparations with 750 or fewer employees are considered small entities. The U.S. Census does not disclose data on the number of drug manufacturing firms by employment size, but between 92 and 96 percent of drug manufacturing establishments, or approximately 650 establishments, are small under this definition (Ref. 4). Although the number of firms that are small would be less than the number of establishments, FDA still concludes that the majority of pharmaceutical preparation manufacturing firms are small entities.

The agency finds that at least 400 firms manufacture U.S.-marketed OTC drug products. Using the SBA size designation, 31 percent of these firms are large, 46 percent are small, and size data are not available for the remaining 23 percent. Therefore, approximately 184 to 276 of the affected manufacturing firms may be considered small. The agency cannot project how many of these OTC drug manufacturers would submit a TEA for consideration of an additional condition in the OTC drug monograph system.

3. Description of Reporting, Recordkeeping, and Other Compliance Requirements

To demonstrate eligibility for consideration in the OTC drug monograph system, sponsors must submit data in a TEA showing that the condition has been marketed ''for a material time'' and ''to a material extent.'' Specific requirements of the TEA are discussed in section II. of this document. All companies who choose to be considered in the OTC drug monograph system must submit these data. FDA expects that all sponsoring companies employ or have ready access to individuals who possess the skills necessary for this data preparation.

4. Identification of Federal Rules That Duplicate, Overlap, or Conflict With the Proposed Rule

The agency is not aware of any relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule. The agency requests any information that may show otherwise.

5. Impact on Small Entities

As described above, this rule could result in some future lost sales dollars for a few manufacturers of post-1972 OTC drug products who would not be permitted to market a product or a product variation without an application or without the inclusion of the condition in a final OTC monograph. The agency anticipates, however, that the time between a proposal to add a condition to a monograph and the final rule will generally be short, thus limiting the impact of the change in procedures concerning interim marketing. In addition, some manufacturers could be adversely affected by the 5-year material extent and material time requirements, similarly causing a loss in future sales dollars. The agency cannot quantify these impacts. However, based on the limited number of post-1972 conditions approved to date, FDA believes that few manufacturers would be significantly affected. The agency requests comment on this issue.

6. Description of Alternatives

In developing the requirements of this proposed rule, the agency considered two alternatives. Initially, FDA thought of proposing a one-step evaluation process, where sponsors would submit safety and effectiveness data concurrently with their TEA. However, the agency decided that this process would be less efficient because it would require sponsoring companies to expend resources to prepare safety and effectiveness data before the agency determines whether eligibility criteria have been met. Likewise, the agency determined that it would be an inefficient use of its resources to review safety and effectiveness data prior to making a decision on eligibility.

The agency also considered allowing manufacturers of post-1972 U.S. OTC drugs to market prior to inclusion in a final OTC drug monograph, as long as the agency had tentatively determined that the condition is GRAS/E. This approach would be consistent with the current process for pre-1972 U.S. OTC drug conditions and with the six requests for interim marketing that the agency has granted for post-1972 OTC drug conditions. However, in order to protect the American public from unnecessary risk, the agency decided that interim marketing should not be allowed under the OTC drug monograph system either for post-1972 U.S. conditions or for conditions with no previous U.S. marketing experience. This policy is believed necessary to allow for thorough public consideration of any safety and effectiveness issues that might arise before broad marketing of the condition begins under the OTC drug monograph system. Further, post-1972 U.S. OTC conditions marketed under NDA's will continue marketing in that manner until the condition is included in the OTC drug monograph system. Finally, the policy allows for the completion of compendial monograph standards for all manufacturers to use. Because FDA expects a relatively short period of time to elapse between a proposal to add a condition to a monograph and the final rule, the agency believes the public health benefits of this rule would outweigh any sales lost over this limited timespan.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains collections of information which are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). ''Collection of information'' includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded.

Description: FDA is proposing additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The proposed criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience could meet the statutory definition of marketing ''to a material extent'' and ''for a material time'' and become eligible. If found eligible, the condition would be evaluated for general recognition of safety and effectiveness in accord with FDA's OTC drug monograph regulations.

Current § 330.10(a)(2) sets forth the requirements for the submission of data and information that is reviewed by FDA to evaluate a drug for general recognition of safety and effectiveness. FDA receives approximately three safety and effectiveness submissions from three sponsors each year, and FDA estimates that it takes approximately 798 hours to prepare each submission.

FDA anticipates that the number of safety and effectiveness submissions would increase to 93 annually as a result of this rulemaking. (Although FDA estimates that the number of TEA's submitted annually would be 50, the agency anticipates that 30 TEA's would be approved, and that this would result in approximately 3 safety and effectiveness submissions for each approved TEA). The time required to prepare each safety and effectiveness submission would also increase as a result of two amendments to current § 330.10(a)(2) under this proposed rule.

One proposed amendment would require the revision of the ''OTC Drug Review Information'' format and content requirements in § 330.10(a)(2) by revising items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 to add the words ''Identify common or frequently reported side effects'' after ''documented case reports.'' This is a clarification of current requirements for submitting documented case reports and would only require sponsors to ensure that side-effects information is identified in each submission. FDA estimates that it would take sponsors approximately 1 hour to comply with this requirement.

A second proposed amendment to current § 330.10(a)(2) would require sponsors to submit an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). (This proposed requirement is also stated in proposed § 330.14(f)(1).) FDA believes that the burden associated with this requirement would also be minimal because similar information may already have been prepared for previous publication in a foreign pharmacopeia, or companies would already have these standards as part of their quality control procedures for manufacturing the product. FDA estimates that the time required for photocopying this material would be approximately 1 hour.

Thus, the time required for preparing each safety and effectiveness submission would increase by a total of 2 hours as a result of the proposed amendments to current § 330.10(a)(2), increasing the approximate hours per each submission from 798 to 800 hours.

Under proposed § 330.14(c), sponsors must submit a TEA when requesting that a condition subject to the proposed regulation be considered for inclusion in the OTC drug monograph system. Based on the data provided and explained in the ''Analysis of Impacts'' section VII above, FDA estimates that approximately 50 TEA's would be submitted to FDA annually by approximately 25 sponsors, and the time required for preparing and submitting each TEA would be approximately 480 hours.

Under proposed § 330.14(f)(2), sponsors would be required to include in each safety and effectiveness submission all serious ADE's from each country where the condition has been or is currently marketed as a prescription or OTC drug product. Sponsors would be required to provide individual ADE reports along with a detailed summary of all serious ADE's and expected or frequently reported side effects for the condition. FDA believes that the burden associated with this requirement would be minimal because individual ADE reports are already required as part of the ''documented case reports'' in the ''OTC Drug Review Information'' under current § 330.10(a)(2). FDA estimates that the time required for preparing and submitting a detailed summary of all serious ADE's and expected or frequently reported side effects would be approximately 2 hours.

Due to the anticipated number of foreign conditions seeking immediate consideration in the OTC drug monograph system, the annual reporting burden estimated in the chart below is the annual reporting for the first 3 years following publication of the final rule. FDA anticipates a reduced burden after this time period.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
330.10(a)(2)					
Safety and Effectiveness Submission	93	1	93	800	74,400
330.14(c)					
Time and Extent Application	25	2	50	480	24,000
330.14(f)(2)					
Adverse Drug Experience Reports	90	1	90	2	180
Total					98,580

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding the information collection by January 19, 2000, to the Office of Information and Regulatory Affairs, OMB (address above).

X. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Memorandum of meeting between Hisamitsu Pharmaceutical Co., Inc., and FDA, October 4, 1994, Comment No. MM9, Docket No. 78N–0301, Dockets Management Branch.

(2) United States Pharmacopeial Convention, ''Concordance of Foreign Pharmacopeial Tests and Assays,'' *Pharmacopeial Forum*, 23(3):4009–4013, 1997.

(3) U.S. Department of Labor, Bureau of Labor Statistics, ''Employment and Earnings,'' January 1996, p. 205.

(4) U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, ''Industry Series Drugs,'' *1992 Census of Manufactures*, Table 4, p. 28C–12.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 330 be amended as follows:

PART 330—OVER–THE–COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 330.10 is amended as follows:

a. In paragraph (a)(2) by adding the words ''or until the Commissioner places the panel's recommendations on public display at the office of the Dockets Management Branch'' at the end of the second sentence;

b. In paragraph (a)(2) by adding the words ''Identify expected or frequently reported side effects.'' after the words ''Documented case reports.'' in items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 in the outline of ''OTC Drug Review Information''; and

c. In paragraph (a)(2) by adding item VII at the end of the outline of ''OTC Drug Review Information'';

d. In paragraph (a)(5) introductory text by removing the word ''shall'' and adding in its place the word ''may'';

e. In paragraphs (a)(5)(ii) and (a)(5)(iii) by removing the word ''all'' from the first sentence;

f. In paragraphs (a)(6)(i) and (a)(9) by removing the word ''is'' and adding in its place the words ''or a specific or specific OTC drugs are'';

g. In paragraph (a)(6)(iv) by removing the word ''quintuplicate'' and by adding in its place ''triplicate'' in the fourth sentence, by removing the words ''during regular working hours'' and by adding in their place ''between the hours of 9 a.m. and 4 p.m.'' in the sixth sentence, and by adding two sentences at the end;

h. In paragraphs (a)(7)(i) and (a)(7)(ii) by revising the first and second sentences;

i. In paragraphs (a)(10)(i) and (a)(10)(iii) by adding in the first sentence the phrase ''in response to any other notice published in the **Federal Register**,'' after the phrase ''paragraph (a)(2) of this section''; and

j. In paragraph (a)(12)(i) in the fourth sentence by removing the number ''60'' and by adding in its place the number ''90'' and by removing the word ''quadruplicate'' and by adding in its place the word ''triplicate'' to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

(a) * * *

(2) * * *

OTC DRUG REVIEW INFORMATION

* * * * *

VII. An official United States Pharmacopeia (USP)–National Formulary (NF) drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). Include information showing that the official or proposed compendial monograph for the active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance used in the studies establishing safety and effectiveness and with the active ingredient or botanical drug substance marketed in the OTC product(s) to a material extent and for a material time. If differences exist, explain why.

* * * * *

(6) * * *

(iv) * * * Alternatively, the Commissioner may satisfy this requirement by placing the panel's recommendations and the data it considered on public display at the office of the Dockets Management Branch and by publishing a notice of their availability in the **Federal Register**. This notice of availability may be included as part of the tentative order in accord with paragraph (a)(7) of this section.

(7) * * *

(i) After reviewing all comments, reply comments, and any new data and information or, alternatively, after reviewing a panel's recommendations, the Commissioner shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs or a specific or specific OTC drugs are generally recognized as safe and effective and not misbranded. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written comments or written objections

specifying with particularity the omissions or additions requested. * * *

(ii) The Commissioner may also publish in the **Federal Register** a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may be published when no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration under paragraph (a)(6)(iv) of this section or when the Commissioner has evaluated and concurs with a panel's recommendation that a condition be excluded from the monograph. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. * * *

* * * * *

3. Section 330.13 is amended by adding paragraph (e) to read as follows:

§ 330.13 Conditions for marketing ingredients recommended for over-the-counter (OTC) use under the OTC drug review.

* * * * *

(e) This section applies only to conditions under consideration as part of the OTC drug review initiated on May 11, 1972, and evaluated under the procedures set forth in § 330.10. Section 330.14(h) applies to the marketing of all conditions under consideration and evaluated using the criteria and procedures set forth in § 330.14.

4. Section 330.14 is added to subpart B to read as follows:

§ 330.14 Additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded.

(a) *Introduction.* This section sets forth additional criteria and procedures by which OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. This section also addresses conditions regulated as a cosmetic or dietary supplement in a foreign country, that would be regulated as OTC drugs in the United States. For purposes of this section, ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use, except as excluded in paragraphs (b)(2) and (b)(3) of this section. For purposes of this part, ''botanical drug substance'' means a drug substance derived from one or more plants, algae, or macroscopic fungi, but does not include a highly purified or chemically modified substance derived from such a source.

(b) *Criteria.* To be considered for inclusion in the OTC drug monograph system, the condition must meet the following criteria:

(1) The condition must be marketed for OTC purchase by consumers. If the condition is marketed in another country in a class of OTC drug products that may be sold only in a pharmacy, with or without the personal involvement of a pharmacist, it must be established that this marketing restriction does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(2) A condition is not eligible for OTC drug monograph status if marketing in the United States is limited to prescription drug use.

(3) The condition must have been marketed OTC for a minimum of 5 continuous years in the same country or countries and in sufficient quantity, as determined in paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this section.

(c) *Time and extent application.* Certain information must be provided when requesting that a condition subject to this section be considered for inclusion in the OTC drug monograph system. The following information must be provided in the format of a time and extent application (TEA):

(1) Basic information about the condition that includes a description of the active ingredient(s) or botanical drug substance(s), pharmacologic class(es), intended OTC use(s), OTC strength(s) and dosage form(s), route(s) of administration, directions for use, and the applicable existing OTC drug monograph(s) under which the condition would be marketed or the request and rationale for creation of a new OTC drug monograph(s).

(i) A detailed chemical description of the active ingredient(s) that includes a full description of the drug substance, including its physical and chemical characteristics, the method of synthesis (or isolation) and purification of the drug substance, and any specifications and analytical methods necessary to ensure the identity, strength, quality, and purity of the drug substance.

(ii) For a botanical drug substance(s), a detailed description of the botanical ingredient (including proper identification of the plant, plant part(s), alga, or macroscopic fungus used; a certificate of authenticity; and information on the grower/supplier, growing conditions, harvest location and harvest time); a qualitative description (including the name, appearance, physical/chemical properties, chemical constituents, active constituent(s) (if known), and biological activity (if known)); a quantitative description of the chemical constituents, including the active constituent(s) or other chemical marker(s) (if known and measurable); the type of manufacturing process (e.g., aqueous extraction, pulverization); and information on any further processing of the botanical substance (e.g., addition of excipients or blending).

(iii) Reference to the current edition of the U.S. Pharmacopeia (USP)–National Formulary (NF) may help satisfy the requirements in this section.

(2) A list of all countries in which the condition has been marketed, including the following information for each country:

(i) How the condition has been marketed (e.g., OTC general sales direct-to-consumer; sold only in a pharmacy, with or without the personal involvement of a pharmacist; dietary supplement; or cosmetic). If the condition has been marketed as a nonprescription pharmacy-only product, establish that this marketing restriction does not indicate safety concerns about its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(ii) The number of dosage units sold. This should include: The total number of dosage units sold, the number of units sold by package sizes (e.g., 24 tablets, 120 milliliters (mL)), and the number of doses per package based on the labeled directions for use. This information shall be presented in two formats: On a year-by-year basis, and cumulative totals. The agency will maintain the year-to-year data as confidential, unless the sponsor waives this confidentiality. The agency will make the cumulative totals public if the condition is found eligible for consideration in the OTC drug monograph system.

(iii) A description of the marketing exposure (e.g., race, gender, ethnicity, and other pertinent factors) to ensure that the condition's use(s) can be reasonably extrapolated to the U.S.

population. If desired, sponsors may use the categories and definitions in The Office of Management and Budget's **Federal Register** notice, titled ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' which identifies the following racial/ethnic groups: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White (62 FR 58781, October 30, 1997). Explain any cultural or geographical differences in the way the condition is used in the foreign country and would be used in the United States. The information in this paragraph need not be provided for OTC drugs that have been marketed for more than 5 years in the United States under a new drug application.

(iv) The use pattern of the condition (i.e., how often it is to be used (according to the label) and for how long). If the use pattern varies in different countries based on the condition's packaging and labeling, or changes in use pattern have occurred over time, describe the use pattern for each country and explain why there are differences or changes.

(v) A description of the country's system for identifying adverse drug experiences, especially those found in OTC marketing experience, including method of collection if applicable.

(3) A statement of how long the condition has been marketed in each country, accompanied by all labeling used during the marketing period, specifying the time period that each labeling was used. All labeling that is not in English must be translated to English in accord with § 10.20(c)(2) of this chapter. The information in this paragraph need not be provided for OTC drugs that have been marketed for more than 5 years in the United States under a new drug application.

(4) A list of all countries where the condition is marketed only as a prescription drug and the reasons why its marketing is restricted to prescription in these countries.

(5) A list of all countries in which the condition has been withdrawn from marketing or in which an application for OTC marketing approval has been denied. Include the reasons for such withdrawal or application denial.

(6) The information requested in paragraphs (c)(2), (c)(2)(i) through (c)(2)(iv), and (c)(3) of this section must be provided in a table format. The labeling required by paragraph (c)(3) of this section must be attached to the table with identification of each time period that it was used.

(d) *Submission of information; confidentiality.* The sponsor must submit three copies of the TEA to the Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852. The Food and Drug Administration will handle the TEA as confidential until such time as a decision is made on the eligibility of the condition for consideration in the OTC drug monograph system. If the condition is found eligible, the TEA will be placed on public display in the Dockets Management Branch after deletion of information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Sponsors must identify information that is considered confidential under these provisions. If the condition is not found eligible, the TEA will not be placed on public display, but a letter from the agency to the sponsor stating why the condition was not found acceptable will be placed on public display in the Dockets Management Branch.

(e) *Notice of eligibility.* If the condition is found eligible, the agency will publish a notice of eligibility in the **Federal Register** and provide the sponsor and other interested parties an opportunity to submit data to demonstrate safety and effectiveness. When the notice of eligibility is published, the agency will place the TEA on public display in the Dockets Management Branch.

(f) *Request for data and views.* The notice of eligibility shall request interested persons to submit published and unpublished data to demonstrate the safety and effectiveness of the condition for its intended OTC use(s). These data shall be submitted to a docket established in the Dockets Management Branch and shall be publicly available for viewing at that office, except data deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Data considered confidential under these provisions must be clearly identified. Any proposed compendial standards for the condition shall not be considered confidential. The safety and effectiveness submissions shall include the following:

(1) All data and information listed in § 330.10(a)(2) under the outline ''OTC Drug Review Information'' items III through VII.

(2) All serious adverse drug experiences as defined in §§ 310.305 and 314.80 of this chapter, from each country where the condition has been or is currently marketed as a prescription drug or as an OTC drug or product. Provide individual adverse drug experience reports (FDA form 3500A or equivalent) along with a summary of all serious adverse drug experiences, and expected or frequently reported side effects for the condition. Individual reports that are not in English must be translated to English in accord with § 10.20(c)(2) of this chapter.

(g) *Administrative procedures.* The agency may use an advisory review panel to evaluate the safety and effectiveness data in accord with the provisions of § 330.10(a)(3). Alternatively, the agency may evaluate the data in conjunction with the advisory review panel or on its own without using an advisory review panel. The agency will use the safety, effectiveness, and labeling standards in § 330.10(a)(4)(i) through (a)(4)(vi) in evaluating the data.

(1) If the agency uses an advisory review panel to evaluate the data, the panel may submit its recommendations in its official minutes of meeting(s) or by a report under the provisions of § 330.10(a)(5).

(2) The agency may act on an advisory review panel's recommendations using the procedures in § 330.10(a)(2) and (a)(6) through (a)(10).

(3) If the condition is initially determined to be generally recognized as safe and effective for OTC use in the United States, the agency will propose to include it in an appropriate OTC drug monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary.

(4) If the condition is initially determined not to be generally recognized as safe and effective for OTC use in the United States, the agency will inform the sponsor and other interested parties who have submitted data of its determination by letter, a copy of which will be placed on public display in the docket established in the Dockets Management Branch. The agency will publish a notice of proposed rulemaking to include the condition in § 310.502 of this chapter.

(5) Interested parties will have an opportunity to submit comments and new data. The agency will subsequently publish a final rule (or reproposal if necessary) in the **Federal Register**.

(h) *Marketing.* A condition submitted under this section for consideration in the OTC drug monograph system may be marketed in accordance with an applicable final OTC drug monograph(s) only after the agency determines that the condition is generally recognized as safe and effective and includes it in the appropriate OTC drug final monograph(s) and the condition complies with paragraph (i) of this section.

(i) *Compendial monograph.* Any active ingredient or botanical drug

substance included in a final OTC drug monograph must be recognized in an official USP–NF drug monograph that sets forth its standards of identity, strength, quality, and purity. Sponsors must include an official or proposed compendial monograph as part of the safety and effectiveness data submission under item VII of the OTC Drug Review Information in § 330.10(a)(2).

Dated: September 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–32428 Filed 12–17–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106012–98]

RIN 1545–AW17

Definition of Contribution in Aid of Construction Under Section 118(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the definition of a contribution in aid of construction under section 118(c) and the adjusted basis of any property acquired with a contribution in aid of construction. The proposed regulations affect a regulated public utility that provides water or sewerage services because a qualifying contribution in aid of construction is treated as a contribution to the capital of the utility and excluded from gross income. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by March 22, 2000.

Outlines of topics to be discussed at the public hearing scheduled for April 27, 2000, must be received by April 6, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106012–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106012–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Paul Handleman, (202) 622–3040; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

Comments on the collection of information should be received by February 18, 2000.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The requirement for the collection of information in this notice of proposed rulemaking is in § 1.118–2(e). The information is required by the IRS to establish that a taxpayer has notified the IRS of amounts to be treated as a contribution to capital under section 118(c). This information will be used to determine when the statutory period for the assessment of any deficiency attributable to any contribution to capital under section 118(c) expires. The collection of information is mandatory. The likely respondents are businesses and other for-profit organizations.

Estimated total annual reporting burden: 100 hours.

The estimated annual burden per respondent varies from .5 hours to 5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 100.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide regulations under section 118(c) of the Internal Revenue Code of 1986. Section 118(c) was added to the Code by section 1613(a)(1)(B) of the Small Business Job Protection Act of 1996 (SBJPA of 1996), 1996–3 C.B. 155, 248–250. Under section 1613(a)(3) of the SBJPA of 1996, the amendments made by section 1613(a) apply to amounts received after June 12, 1996.

Explanation of Provisions

Contribution to Capital

Section 118(a) generally provides that, in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. Under section 118(b), a contribution in aid of construction generally is not a contribution to the capital of the taxpayer and is not excluded from gross income under section 118(a). However, for amounts received after June 12, 1996, section 118(c) provides an exception to this rule.

Under section 118(c)(1), the term ''contribution to the capital of the

taxpayer'' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if the amount is a contribution in aid of construction. In the case of a contribution of property other than water or sewerage disposal facilities, the amount must meet the requirements of the expenditure rule of section 118(c)(2) (which generally requires that the amount is expended to acquire or construct water or sewerage disposal facilities within the specified time period). Moreover, the amount (or any property acquired or constructed with the amount) cannot be included in the taxpayer's rate base for rate-making purposes.

Contribution in Aid of Construction

Section 118(c)(3)(A) provides that, for purposes of section 118(c), the term ''contribution in aid of construction'' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

Section 118(c) was added by the SBJPA of 1996 ''to restore the contribution in aid of construction provision that was repealed by the Tax Reform Act of 1986 (1986 Act) for regulated public utilities that provide water or sewerage disposal services.'' H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 316 (1996), 1996–3 C.B. 741, 1056. Before the 1986 Act, former section 118(b) generally provided that a contribution in aid of construction received by a regulated public utility was treated as a contribution to the capital of the taxpayer and was excluded from gross income. However, former section 118(b)(3)(A) provided that the term ''contribution in aid of construction'' did not include amounts paid as customer connection fees (including amounts paid to connect the customer's line to an electric line, a gas main, a steam line, or a main water or sewer line and amounts paid as service charges for starting or stopping services). The legislative history of the SBJPA of 1996 also states that ''[p]rior to the enactment of the Tax Reform Act of 1986 * * * [a nontaxable] contribution in aid of construction did not include a connection fee.'' *Id.*

The nontaxable contribution in aid of construction provision in former section 118(b) is derived from a line of cases, including several Supreme Court cases, beginning with *Edwards* v. *Cuba R.R.,* 268 U.S. 628 (1925), IV–2 C.B. 122. In *Edwards,* the Supreme Court held that subsidy payments by the Republic of Cuba to a railroad company to induce the construction and operation of a railroad in Cuba were not included in the recipient corporation's gross income because the payments were not made for services rendered or to be rendered. In *Detroit Edison Co.* v. *Commissioner,* 319 U.S. 98 (1943), 1943 C.B. 1019, the Supreme Court looked at the contributors' motivation to determine whether payments by customers for extending electrical service lines were nonshareholder contributions to capital. Because the transferors received direct benefits in the form of services as a result of the contributions, the Court held that the payments were not contributions to capital, but the price for receiving service.

The Supreme Court elaborated on the contributor's motivation in *Brown Shoe Co.* v. *Commissioner,* 339 U.S. 583 (1950), 1950–1 C.B. 38, when it held that, if the transferor did not anticipate any direct benefit from the contribution, such as the receipt of services, but expected only that the transaction would benefit the community at large, the funds were contributions to capital. The lack of a direct benefit to the transferor was considered indicative of an intent to increase the transferee's capital. In *United States* v. *Chicago, Burlington & Quincy R.R.,* 412 U.S. 401 (1973), 1973–2 C.B. 428, the Supreme Court held that government payments received by a railroad company for improvements at grade crossing and intersections were not contributions to capital. In reaching its holding, the Court set forth five characteristics of a nonshareholder contribution to capital, including that the amounts received must not constitute payments for specific, quantifiable services provided for the transferor by the transferee.

Consistent with the above Supreme Court cases, a customer connection fee would not have qualified as a nonshareholder contribution to the capital of the utility under section 118(a) because the fee clearly is paid as a prerequisite for obtaining services. In addition, the IRS' position prior to the enactment of former section 118(b) as articulated in Rev. Rul. 75–557, 1975–2 C.B. 33, was that customer connection fees charged by a water utility were not excludable from income. In 1976, Congress enacted former section 118(b) to treat contributions in aid of construction to water or sewerage disposal facilities as excludable contributions to capital. This legislation specifically excluded customer connection fees from the definition of nontaxable contributions in aid of construction. As explained by the court in *Florida Progress Corp.* v. *United States,* M.D. Fla., No. 93–246–CIV-T–25A, 9/2/98, Congress enacted former section 118(b) in 1976 to codify the already existing case law with regard to contributions in aid of construction to water and sewerage disposal facilities. Thereafter, payments made to a utility to encourage the extension of facilities into new areas benefitting a large number of people would be given tax free status; however, as held by the Supreme Court in *Detroit Edison,* payments made to a utility as a prerequisite to receiving water or sewerage service would be treated as taxable income to the utility.

The proposed regulations define the term ''contribution in aid of construction,'' for purposes of section 118(c), as meaning any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities. However, to restore the contribution in aid of construction provision that existed before the 1986 Act for regulated public utilities providing water and sewerage disposal services as well as to be consistent with the Supreme Court cases discussed above, the proposed regulations exclude customer connection fees from the definition of contribution in aid of construction.

A customer connection fee is defined in the proposed regulations as any amount of money or property contributed to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. However, money or property contributed for a connection or service line from the utility's main line to the customer 's or potential customers line is not a customer connection fee if the connection or service line does serve, or is designed to serve, more than one customer. The proposed regulations also define a customer connection fee as including any amount paid as a service charge for stopping or starting service.

The proposed regulations indicate that a contribution in aid of construction may include an amount of money or other property contributed to a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay, in whole or in part, the amount to the contributor (commonly referred to as an ''advance''). However, no inference is intended as to whether an amount subject to such a

repayment obligation is a contribution or loan. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances.

Adjusted Basis

Section 118(c)(4) provides that notwithstanding any other provision of subtitle A, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which section 118(c) applies. The adjusted basis of any property acquired with a contribution in aid of construction to which section 118(c) applies shall be zero.

Consistent with section 118(c)(4), the proposed regulations provide rules for adjusting the basis of water or sewerage disposal facilities acquired as, or acquired or constructed with any money received as, a contribution in aid of construction.

Statute of Limitations

Section 118(d)(1) provides that if the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in section 118(c), then the statutory period for the assessment of any deficiency attributable to any part of the amount does not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the amount of the expenditure referred to in section 118(c)(2)(A), of the taxpayer's intention not to make the expenditures referred to in section 118(c)(2)(A), or of a failure to make the expenditure within the period described in section 118(c)(2)(B). Section 118(d)(2) provides that the deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent assessment. The proposed regulations provide the time and manner for taxpayers to notify the Secretary with respect to its contributions in aid of construction under section 118(d)(1).

Proposed Effective Date

The regulations are proposed to be applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, April 27, 2000, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 6, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.118–2 also issued under 26 U.S.C. 118(c)(3)(A); * * *

Par. 2. Section 1.118–2 is added to read as follows:

§ 1.118–2 Contribution in aid of construction.

(a) *Special rule for water and sewerage disposal utilities*—(1) *In general.* For purposes of section 118, the term ''contribution to the capital of the taxpayer'' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if—

(i) The amount is a contribution in aid of construction under paragraph (b) of this section;

(ii) In the case of a contribution of property other than water or sewerage disposal facilities, the amount satisfies the expenditure rule under paragraph (c) of this section; and

(iii) The amount (or any property acquired or constructed with the amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) *Definitions*—(i) *Regulated public utility* has the meaning given such term by section 7701(a)(33), except that such term does not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(ii) *Water or sewerage disposal facility* is defined as tangible property described in section 1231(b) that is used predominately (i.e., 80% or more) in the trade or business of furnishing water or sewerage disposal services.

(b) *Contribution in aid of construction*—(1) *In general.* For

purposes of section 118(c) and this section, the term ''contribution in aid of construction'' means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities.

(2) *Advances.* A contribution in aid of construction may include an amount of money or other property contributed to a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay the amount, in whole or in part, to the contributor (commonly referred to as an ''advance''). For example, an amount received by a utility from a developer to construct a water facility pursuant to an agreement under which the utility will pay the developer a percentage of the receipts from the facility over a fixed period may constitute a contribution in aid of construction. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances. For the treatment of any amount of a contribution in aid of construction that is repaid by the utility to the contributor, see paragraphs (c)(2)(ii) and (d)(2) of this section.

(3) *Customer connection fee.* A customer connection fee is not a contribution in aid of construction under this paragraph (b) and is includible in income. The term ''customer connection fee'' includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. However, money or other property contributed for a connection or service line from the utility's main line to the customer's or potential customer's line is not a customer connection fee if the connection or service line does serve, or is designed to serve, more than one customer. A customer connection fee also includes any amount paid as a service charge for stopping or starting service.

(4) *Binding agreement to reimburse utility for a facility previously placed in service.* If a water or sewerage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a contribution in aid of construction under this paragraph (b) with respect to the cost of the facility unless, at the time the facility is placed in service by the utility, there is an agreement, binding under local law between the prospective contributor and the utility, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility. If such an agreement exists, the basis of the facility must be reduced by the amount of the contribution at the time the facility is placed in service.

(5) *Classification by ratemaking authority.* The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a contribution in aid of construction is not conclusive as to its treatment under this paragraph (b).

(c) *Expenditure rule*—(1) *In general.* An amount satisfies the expenditure rule of section 118(c)(2) if the amount is expended for the acquisition or construction of property described in section 118(c)(2)(A), the amount is paid or incurred before the end of the second taxable year after the taxable year in which the amount was received as required by section 118(c)(2)(B), and accurate records are kept of contributions and expenditures as provided in section 118(c)(2)(C).

(2) *Excess amount*—(i) *Includible in the utility's income.* An amount received by a utility as a contribution in aid of construction that is not expended for the acquisition or construction of water or sewerage disposal facilities as required by paragraph (c)(1) of this section (the excess amount) is not a contribution to the capital of the taxpayer under paragraph (a) of this section. Except as provided in paragraph (c)(2)(ii) of this section, such excess amount is includible in the utility's income in the taxable year in which the amount was received.

(ii) *Repayment of excess amount.* If the excess amount described in paragraph (c)(2)(i) of this section is repaid, in whole or in part, either—

(A) Before the end of the time period described in paragraph (c)(1) of this section, the repayment amount is not includible in the utility's income; or

(B) After the end of the time period described in paragraph (c)(1) of this section, the repayment amount may be deducted by the utility in the taxable year in which it is paid or incurred to the extent such amount was included in income.

(3) *Example.* The application of this paragraph (c) is illustrated by the following example:

Example. M, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 1999 for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeded the actual cost of the facility, the contribution was subject to being returned. In 2000, M built the facility at a cost of $700,000 and returned $200,000 to the contributor. As of the end of 2001, M had not returned the remaining $100,000. Assuming accurate records are kept, the requirement under section 118(c)(2) is satisfied for $700,000 of the contribution. Because $200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining $100,000 is includible in M's income for its 1999 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining $100,000 after year 2001, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) *Adjusted basis*—(1) *Exclusion from basis.* Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution.* If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year.

(3) *Allocation of contributions.* An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example.* The application of this paragraph (d) is illustrated by the following example:

Example. A, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 1999 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2000, A builds the facility at a cost of $700,000 and returns $300,000 to B. In 2001, A pays

$20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the $700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the $700,000 facility constructed with this contribution to capital is zero. The $300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the $300,000 excess amount to B in 2000 is not treated as a capital expenditure by A. The $20,000 payment to B in 2001 is treated as a capital expenditure by A in 2001 resulting in an increase in the adjusted basis of the water facility from zero to $20,000.

(e) *Statute of limitations*—(1) *Extension of statute of limitations.* Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification.* Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section:

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date.* This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–32693 Filed 12–17–99; 8:45 am]

BILLING CODE 4830–01–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–1A]

Satellite Carrier Statutory License; Definition of Unserved Household

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination.

SUMMARY: The Copyright Office of the Library of Congress is closing this rulemaking to determine whether local retransmissions are covered by the section 119 satellite statutory license because the matter has been resolved by passage of the Satellite Home Viewer Improvement Act of 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On January 26, 1998, by petition from EchoStar Communications Corporation (''EchoStar''), the Copyright Office opened this rulemaking proceeding to consider whether the section 19 satellite carrier statutory license was broad enough in scope to encompass satellite retransmission of television broadcast stations to subscribers who resided within the local markets of those stations. 63 FR 3685 (January 26, 1998). It was the second time in two years that the Copyright Office had been requested to consider whether section 119 covered local retransmissions.

The passage of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA'') has rendered this rulemaking proceeding moot. Congress has clarified that local retransmissions are not covered by the section 119 license. Instead, they are covered by the new, royalty-free section 122 license that is expressly limited to local retransmissions of television broadcast stations by satellite carriers.

Because this rulemaking has been superseded by an Act of Congress, the Office is closing the above-captioned docket number and is terminating this proceeding.

Dated: December 15, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–37906 Filed 12–17–99; 8:45 am]

BILLING CODE 1410–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM39–1–7416b; FRL–6504–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Mexico; Approval Revised Maintenance Plan for Albuquerque/Bernalillo County; Albuquerque/Bernalillo County, NM; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is taking direct final action on a revision to the State Implementation Plan for New Mexico. This action revises the carbon monoxide maintenance plan, that was adopted by the City of Albuquerque during redesignation to attainment. Albuquerque requested approval of the revision to the CO maintenance plan under section 175A of the Act. In the final rules section of this **Federal Register**, we are approving the revision as a direct final rule without prior proposal, because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final notice of this action located elsewhere in today's **Federal Register** for a detailed description of the New Mexico revision to the SIP.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving Albuquerque's SIP revision

as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by January 19, 2000.

ADDRESSES: You should address comments on this action to Mr. Thomas Diggs, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and the Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza Room 3023, Albuquerque, New Mexico 87102. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky at (214) 665–7214, or WITOSKY.MATTHEW@EPA.GOV

SUPPLEMENTARY INFORMATION: This document concerns a carbon monoxide maintenance plan, an emission inventory, and a motor vehicle emissions budget. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emission inventory, Maintenance plans, Carbon monoxide.

Dated: November 26, 1999.

Carl E. Edlund,

Acting Regional Administrator,

[FR Doc. 99–32175 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 090–1090a; FRL–6508–3]

Approval and Promulgation of Implementation Plans and Part 70 Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the state of Missouri. These revisions provide changes to rule 10 CSR 10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes. Approval of these revisions will make them Federally enforceable.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 19, 2000.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–32376 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN114–1b; FRL–6501–1]

Approval and Promulgation of Implementation Plan; Indiana Volatile Organic Compound Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the August 18, 1999, Indiana State Implementation Plan (SIP) revision request concerning amendments to Indiana's automobile refinishing rules for Lake, Porter, Clark, and Floyd Counties, and new rules for Stage I gasoline vapor recovery and automobile refinishing spray-gun requirements for Vanderburgh County.

In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 19, 2000.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental

Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: November 4, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–32372 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 101

[WT Docket No. 99–327; FCC 99–333]

Commission's Rules To License Fixed Services at 24 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission proposes licensing and service rules to govern the 24 GHz band generally. Specifically, the Commission proposes that future licensees in the 24 GHz band, as well as licensees relocated to the 24 GHz band from the 18 GHz band, will be generally subject to part 101, as modified to reflect the particular characteristics and circumstances of this band. The Commission also proposes to apply competitive bidding procedures under the Commission's part 1 competitive bidding rules for future licensing in the band.

DATES: Comments are due on or before January 19, 2000. Reply comments are due on or before February 7, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418–0585. Media Contact: Meribeth McCarrick at (202) 419–0654.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in the matter of Amendments to parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket No. 99–327, adopted November 4, 1999 and released November 10, 1999. The complete text of this NPRM is available for inspection and copying during normal business hours in the Commission's Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available through the Internet at http://www.fcc.gov.

Synopsis of Notice of Proposed Rulemaking

1. In 1983, the Commission adopted rules for Digital Electronic Message Service (''DEMS''), which was envisioned as a high-speed, two-way, point-to-multipoint terrestrial microwave transmission system. *See,* Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, *Memorandum Opinion and Order,* 63 FR 50538, (September 22, 1998), (''DEMS MO&O''). The service was allocated spectrum in the 18.36–18.46 GHz band paired with the 18.94–19.04 GHz band. Subsequently, the Commission modified the initial DEMS allocation, instead designating spectrum in the 18.82–18.92 GHz and 19.16–19.26 GHz bands. The Commission began to grant DEMS licenses in the early 1980's, but the service was not initially commercially successful. Frequently, licensees had to return their licenses because they had not met construction requirements. The high cost of equipment appears to have been one of the many issues involved in the service's lack of early success. In the early 1990s, a small number of companies began acquiring licenses in approximately 30 of the country's largest markets.

2. In January 1997, and again in March 1997, the National Telecommunications and Information Administration (''NTIA''), on behalf of the United States Department of Defense (''DoD''), formally requested that the Commission take action to protect military satellite system operations in the 18 GHz band. NTIA stated that DEMS use of frequencies in the 17.8–20.2 GHz bands within 40 kilometers of existing Government Fixed-Satellite Service (''FSS'') earth stations ''will not be possible.'' As a result, NTIA asked the Commission to protect those government satellite earth stations operating in the 18 GHz band in Washington, DC and Denver, and ''[e]xpeditiously undertake any other necessary actions, such as amending the Commission's rules and modifying Commission issued licenses.'' Specifically, in its January 1997 letter, NTIA stated:

> We are asking that these actions be undertaken on an expedited basis. As we have previously indicated, this matter involves military functions, as well as specific sensitive national security interests of the United States. These actions are essential to fulfill requirements for Government space systems to perform satisfactorily.

The Commission is permitted to amend its Rules without complying with the notice provisions of the Administrative Procedure Act (APA) in cases involving any ''military, naval of [sic] foreign affairs function of the United States'' or where the agency for good cause finds ''notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest.'' To protect the two government earth stations from interference, NTIA proposed to make 400 MHz of spectrum available in the 24 GHz band so that the Commission could relocate DEMS licensees. Recognizing the Commission's objective of maintaining DEMS on a uniform, nationwide frequency band, NTIA stated that ''[t]aking into account our common interests, [NTIA] could make available spectrum in the region of 24.25–24.65 GHz'' and suggested that ''the Commission take such steps as may be necessary to license DEMS stations in this spectrum * * *''

3. For its part, the Commission had before it sharing issues between 18 GHz non-Government satellite services and DEMS. *See* Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band For Fixed Service, *Order,* 62 FR 24576 (May 6, 1997) (''Reallocation Order''). In July 1996, the Commission designated 500 MHz of spectrum in the 18.8–19.3 GHz band for non-geostationary satellite orbit, fixed satellite service (NGSO/FSS) downlinks to help meet increasing demand for spectrum for this service. *See,* Rulemaking to Amend parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 61 FR 39425 (July 29, 1996). Initially, it appeared that sharing between NGSO/FSS and DEMS would be possible. However, subsequent to that allocation, the only applicant for an NGSO/FSS system in the 18 GHz band

indicated that coordination between the two services might present difficulties.

4. Finally, on March 5, 1997, NTIA reiterated its request for protection of government systems, using the 18 GHz band and further discussed the issues regarding use of that spectrum. NTIA stated again that it had ''determined that both existing and anticipated FCC licensees could cause interference problems to the Federal Government use of the 18 GHz band.'' Consequently, NTIA offered to withdraw government co-primary allocations for radionavigation service in the 24.25–24.45 and 25.05–25.25 GHz bands to clear the way for DEMS relocation. Accordingly, in the *Reallocation Order*, adopted on March 14, 1997, the Commission amended the Table of Frequency Allocations and part 101 of the Commission's Rules regarding Fixed Microwave Services to permit fixed service use of the 24.25–24.45 GHz and 25.05–25.25 GHz bands (24 GHz band). *See* 47 CFR 101. This also had the practical effect of resolving potential interference concerns between non-Government NGSO/FSS and DEMS operations at 18 GHz.

A. Licensing Plan for 24 GHz Services

1. Table of Allocations

5. In the *Reallocation Order,* the Commission amended the Table of Allocations in part 2 of the Commission's Rules to add the fixed service on a primary basis in the 24 GHz band, and the Commission recognized the deletion of radionavigation by the government from its portion of the 24 GHz band. *See* 47 CFR 2. One issue the Commission intends to examine in this rulemaking is whether the Table of Allocations should be amended further to facilitate other possible uses of spectrum in the 24 GHz band. The Commission has focused its initial review on the issue of whether mobile service should be added to the Table of Allocations for the 24 GHz band. Based on the information currently available, it appears that, in the near term, equipment may not be available for mobile use in the 24 GHz band. Licensees at 18 GHz are limited to fixed service, and no one has requested the opportunity to provide mobile service at 24 GHz. If, contrary to the Commission's assumption, equipment is available for mobile use in this band, and interference problems can be resolved, the Commission knows of no reason why it would not allow mobile operations. The Commission believes this would be consistent with its goal of providing 24 GHz licensees with flexibility in designing their systems. The Commission seeks comment on whether it should include an allocation in the 24 GHz band for mobile service.

6. The Commission proposes to amend the Commission's Table of Allocations and rules to provide, among other things, for the use of the 24.75–25.25 GHz band for Broadcasting Satellite Service (BSS) earth-to-space ''feeder links'' in the FSS. *See,* Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, *Notice of Proposed Rulemaking,* 63 FR 54100 (October 8, 1998) (''18 GHz Band Plan''). Current 24 GHz licensees contend that the Commission would have to prohibit 24 GHz BSS feeder link sites within 300 miles of the boundaries of each 24 GHz service area, a requirement that would be too impractical and inefficient to be consistent with the public interest. On the other hand, one licensee takes the position that it is possible for BSS feeder links and 24 GHz nodal stations, which are the central or controlling station in a radio system operating on point-to-multipoint frequencies, in the 25.05–25.25 GHz band to share spectrum on a co-frequency basis at distances in the range of 0.2 miles. Because BSS feeder link stations need not be ubiquitously employed and can be located outside population centers, the Commission believes sharing between these services may be feasible. In the 18 GHz Band Plan proceeding, the Commission noted that the corresponding downlink BSS allocation in the 17.3–17.8 GHz band cannot become effective until after April 1, 2007; and thus there is no immediate need to implement the FSS allocation in the 25.05–25.25 GHz band. Delaying the FSS allocation would allow sufficient time for a detailed sharing methodology to be formulated between terrestrial fixed service interests and satellite interests. In light of the foregoing, the Commission tentatively concludes, based on preliminary review of the petition and comments filed regarding such FSS use of this band, that the criteria need not be as severe and restrictive as that put forth by the current 24 GHz licensees, and that a more workable solution can be developed. The Commission solicits comment on the interaction between these two services.

7. The Commission proposes to revise the Table of Frequency Allocations in part 2 of its rules to delete the non-Government radionavigation service allocations in the 24.25–24.45 GHz and 25.05–25.25 GHz bands, which is consistent with previous Government action taken with respect to these bands. The Commission has not issued any licenses for the use of these bands by the radionavigation service, and does not anticipate any demand for this service in these bands. Further, the Commission also proposes to delete footnote US341 from the Table of Frequency Allocations because the Federal Aviation Administration has decommissioned its remaining radar facility at the Newark, New Jersey International Airport and thus, concluded its operations in the 24.25–24.45 GHz band. In light of the foregoing, the Commission proposes to amend the frequency table in the aviation service rules, specifically section 87.173(b), by changing the entry for 24.25–25.45 GHz to 24.45–25.05 GHz, which would remain available for use by the aeronautical radionavigation service. *See* 47 CFR 87.173(b).

2. Geographic Area-Wide Licensing

8. The Commission proposes to license the 24 GHz band spectrum on the basis of Economic Areas (EAs), which were developed by the Department of Commerce's Bureau of Economic Analysis (BEA), because it believes this licensing scheme would best serve the public interest in facilitating efficient use of this spectrum. *See* Final Redefinition of the BEA Economic Areas, 60 FR 13114 (March 10, 1995). The Commission seeks comment on this proposal. The Commission tentatively concludes that using EAs for 24 GHz licenses in connection with its proposed partitioning and disaggregation rules discussed will create reasonable opportunities for the dissemination of 24 GHz licenses among a large number of entities. *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, (''39 GHz''), *Memorandum Opinion and Order,* ET Docket No. 95–183, 64 FR 45891, (August 23, 1999). The Commission also tentatively concludes that using EAs for 24 GHz licenses will facilitate service to rural areas. *See* 47 USC 309(j)(3)(A). Specifically, because EAs typically contain both urban and rural areas, licensees will have both the legal authority to provide service in both areas and the financial incentive to do so in order to earn a return on their investment in their licenses. In contrast, the Standard Metropolitan Statistical Areas (''SMSA'') which were originally used to license DEMS service did not include rural areas, and thus, rural areas

were not provided the service. Further, the relatively small size of EAs will allow for a more rapid build-out than might be the case in a larger geographic area. In addition, to give licensees maximum flexibility, the Commission tentatively concludes that licensees will be permitted to aggregate licenses in order to operate in larger geographic areas. The Commission seeks comment on these tentative conclusions. Because the Commission used SMSAs to license those that were originally relocated from 18 GHz to 24 GHz, it proposes to exclude from the applicable EAs, the areas currently licensed in the 24 GHz band, and to add as three additional areas for licensing the United States territories and possessions over which the Commission has jurisdiction: Guam and the Commonwealth of Northern Marianas (EA 173), Puerto Rico and the U.S. Virgin Islands (EA 174), and American Samoa (EA 175). *See e.g.,* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 62 FR 16004 (April 3, 1997). The Commission seeks comment on these proposals.

9. The Commission also requests comment on alternative geographic areas, including nationwide licenses, and licenses based upon Metropolitan and Rural Service Areas (MSAs and RSAs), *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order,* 59 FR 24947 (May 13, 1994), Regional Economic Area Groupings (REAGs), Major Economic Areas (MEAs) or other relevant geographic areas. Commenters supporting alternative geographic areas should specify which areas they support and explain in detail why those alternatives would be superior to the use of EAs for 24 GHz licensing areas.

3. Treatment of Incumbents

10. As the Commission discussed in the *Reallocation Order,* incumbent licensees would begin to transfer their operations to frequencies in the 24 GHz band over a period of time commencing with the effective date, June 24, 1997, of the Order which modified the licenses. After the transfer of operations by an incumbent licensee to the 24 GHz band, such licensee generally shall be governed by part 101 of the Commission's rules. *See* 47 CFR 101. Under those rules, transferred licensees are generally subject to the same rules as applied to operations in the 18 GHz band.

11. By this *NPRM,* the Commission proposes to make licensees subject to any changes it makes in this proceeding to the part 101 rules that are generally applicable to the 24 GHz band, including interference criteria. Therefore, it is the Commission's tentative view that no special rules for protection of incumbents alone are necessary, any more than special protections would be required if additional providers were licensed in the 18 GHz band. The Commission believes that the protection requirements of part 101.509 will accommodate the new stations and allow licensees to effectively coordinate their systems. To the extent that any incumbent licensee wishes to use additional frequencies at 24 GHz or to extend its currently authorized service area, then such licensee may apply for such a license or licenses subject to the Commission's competitive bidding and other assignment procedures available. Any incumbent licensee may also acquire additional frequencies in the 24 GHz band through the partitioning and disaggregation procedures proposed. The Commission seeks comment on these proposals.

4. Authorized 24 GHz Services

12. In the *Reallocation Order,* the Commission adopted fixed service in this band as the only authorized use under its Table of Frequency Allocations. In keeping with this allocation, the Commission proposes to permit any 24 GHz licensee to use spectrum in the band for any fixed service. In addition, as discussed in section II.B.1, *supra,* the Commission seeks comment on whether it should permit the use of this band for mobile services, should it become technically feasible to do so. While the Commission proposes general ''fixed'' use for this spectrum, it does not know precisely the types of services new licensees will seek to provide. The Commission therefore proposes rules that will enable licensees to offer a wide variety of services and that will minimize regulatory barriers and costs of operation. It is the Commission's tentative view that the proposals it is making regarding licensed services areas, spectrum blocks, and partitioning and disaggregation will provide both incumbent and new licensees with a wide variety of options for using 24 GHz spectrum to meet market demands.

13. The Commission notes that section 303(y) of the Communications Act grants it the ''authority to allocate electromagnetic spectrum so as to provide flexibility of use,'' if ''such use is consistent with international agreements to which the United States is a party'' and if the Commission makes certain findings. The Commission has not proposed to allocate this spectrum to multiple categories of service listed in the Table of Allocations, but rather have allocated spectrum only to the Fixed Service. However, in this service rule proceeding, the Commission is seeking comment on whether to expand or revise its earlier approach. The Commission seeks comment on the findings required by section 303(y) of the Act and whether section 303(y) applies here.

14. The Commission proposes to modify part 101 of its rules to include the entire range of digital services to be provided at 24 GHz, so that the use of the 24 GHz band by new and relocated licensees in the 24 GHz band shall be subject to those rules. (Because relocated and new licensees in the 24 GHz band will be treated the same, the Commission refers to both as ''24 GHz licensees.'') The Commission refers to them separately as ''relocated licensees'' and ''new licensees.'' Consequently, all applications for licenses will be filed pursuant to Section 101 of 47 CFR. The Commission also proposes to modify part 101 of its rules to the extent necessary to reflect the particular characteristics and circumstances of the services to be offered. The Commission seeks comment on this general approach. The Commission discusses several specific issues in this *NPRM,* but also requests comment on any other changes in the existing part 101 rules that might be useful or necessary for the 24 GHz band. The Commission believes that making this spectrum available for use under these rules is in the public interest because it will contribute to technological and service innovation and, more robust competition in the telecommunications service markets.

5. Spectrum Blocks

15. In the *Reallocation Order*, the Commission decided to license relocated operations in 40 megahertz channel pairs. 47 CFR 101.109(c). The Commission proposes that the same amount of spectrum be provided to each new 24 GHz licensee as is provided under the rules for the relocated licensees adopted in the *Reallocation Order*. In the *Reallocation Order*, the Commission discussed the basis for its conclusion that DEMS licensees need 40 megahertz channel pairs at 24 GHz for their capacity to be equivalent to the capacity they have at 18 GHz. The Commission found that differences in propagation, rain attenuation, and available equipment between the two bands would require DEMS systems at 24 GHz to use approximately four times as much bandwidth as DEMs systems at

18 GHz to maintain comparable reliability and coverage. While this analysis would not necessarily apply to non-DEMS use at 24 GHz, the Commission believes that 40 megahertz paired blocks would be efficient for such use. Thus, the Commission proposes that it license five spectrum blocks, except in the SMSAs where there are incumbent licensees. Each spectrum block shall consist of a pair of 40 megahertz channels. The Commission also proposes to modify the emission mask in section 101.111 to accommodate the changes in spectrum and bandwidth. *See* 47 CFR 101.111. The Commission seeks comment on these proposals.

16. The Commission tentatively concludes that the use of EAs, described in section A.2, *supra,* as well as the partitioning and spectrum disaggregation, described in section B.4, *infra,* will result in economic opportunity for a wide variety of applicants, including small business, rural telephone, and minority-owned and women-owned applicants, as required by section 309(j)(4)(C). These proposals, the Commission tentatively concludes, will lower entry barriers through the creation of licenses for smaller geographic areas, thus requiring less capital and facilitating greater participation by such entities.

B. Application, Licensing, and Processing Rules

1. Regulatory Status

17. In this *NPRM,* the Commission is proposing a broad licensing framework for implementing services in the 24 GHz spectrum band. Under its proposal, a 24 GHz licensee would be allowed to provide a variety or combination of fixed services. In order to fulfill its enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission has required applicants to identify whether they seek to provide common carrier services.

18. In the *LMDS Second Report and Order,* the Commission required applicants for fixed services to indicate if they planned to offer services as a common carrier, a non-common carrier, or both, and to notify the Commission of any changes in status without prior authorization. The Commission seeks comment on a similar proposal to permit an applicant for a 24 GHz license to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require the applicant to choose between common carrier and non-common carrier services, and to change regulatory status upon notification without prior approval. The licensee would be able to provide all allowable services anywhere within its licensed area at any time, consistent with its regulatory status. This approach, the Commission tentatively concludes, would achieve efficiencies in the licensing and administrative process. This is consistent with its approach with respect to Multipoint Distribution Service (''MDS''), and the Local Multipoint Distribution Service (''LMDS''). *See* Revisions to part 21 of the Commission's Rules Regarding the Multipoint Distribution Service, ''*MDS Report and Order*'', 52 FR 27553 (July 22, 1987). Apart from the designation of regulatory status, the Commission proposes not to require 24 GHz license applicants to describe the services they seek to provide. The Commission believes it is sufficient that an applicant indicate its choice for regulatory status in a streamlined application process. In providing guidance on this issue to MDS and LMDS applicants, the Commission points out that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise, the applicant must choose non-common carrier status. Accordingly, a determination of regulatory status will be based on the service actually provided, rather than the service proposed. The Commission also proposes that if licensees change the service they offer such that it would change their regulatory status, they must notify the Commission, although such change would not require prior Commission authorization. The Commission proposes that licensees notify them within 30 days of this change, unless the change results in the discontinuance, reduction, or impairment of the existing service, in which case the licensee is also governed by section 101.305 and submits the application under section 1.947 in conformance with the time frames and requirements of § 101.305. *See* 47 CFR 101.305.

2. Eligibility

19. The Commission's primary goal in the present proceeding is to encourage efficient competition, particularly in the local exchange telephone market. In assessing whether to restrict the opportunity of any class of service providers to obtain and use spectrum to provide communications services in the 24 GHz band, the Commission seeks to determine whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz, *Report and Order and Second Notice of Proposed Rulemaking,* (''39 GHz Report and Order''), 63 FR 3075 (January 21, 1998). This approach relies on competitive market forces to guide license assignment absent a showing that regulatory intervention to exclude potential participants is necessary. Such an approach is appropriate because it best comports with the Commission's statutory guidance. When granting the Commission authority in section 309(j)(3) of the Communications Act to auction spectrum for the licensing of wireless services, Congress acknowledged the Commission's authority ''to [specify] eligibility and other characteristics of such licenses.'' However, Congress specifically directed the Commission to exercise that authority so as to ''promot[e] * * * economic opportunity and competition.'' Congress also emphasized this pro-competitive policy in section 257, where it articulated a ''national policy'' in favor of ''vigorous economic competition'' and the elimination of barriers to market entry by a new generation of telecommunications providers.

20. Current providers in the 24 GHz band offer a range of services such as local and long distance telephony and internet access. The Commission tentatively concludes that open eligibility for 24 GHz licenses will not pose a significant likelihood of substantial competitive harm in local exchange telephone markets, and that it is therefore unnecessary to impose eligibility restrictions on incumbent local exchange carriers (''ILECs''). This tentative conclusion is based on several factors. First, other wireless providers such as LMDS and 39 GHz licensees may provide competition in the local telephony markets. *See* 47 CFR 101.1003(a) and Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order and Second Notice of Proposed Rulemaking.* Second, other facilities-based, wireline entrants such as interexchange carriers and competitive LECs, and non-facilities-based wireline entrants utilizing the local competition provisions of the Communications Act, may provide competition in these

markets as well. Third, in LMDS, a fixed broadband point-to-multipoint microwave service in the 28 GHz band, ILECs and cable companies have been prohibited from holding an attributable interest in any license whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. This prohibition guaranteed that initially each one of those licenses will be acquired by a firm new to the provision of local exchange in the service area. These new providers have now had a significant opportunity to enter these markets without the participation of ILECs and cable interests. Finally, under its proposal, the Commission will make available five licenses for each geographic area. This number of licenses permits numerous 24 GHz licensees in any one market and, thus, numerous competitors for the licenses. This scenario makes it more difficult for an incumbent LEC to acquire all the licenses in a single geographic area. Taken together, these factors demonstrate that an incumbent strategy of trying to forestall competition in local telephony by buying 24 GHz licenses cannot succeed because there are several other sources of actual and potential competition.

21. Given all these competitive possibilities, the Commission tentatively concludes that it would be exceedingly difficult for an incumbent LEC to pursue a strategy of buying 24 GHz licenses in the hope of foreclosing or delaying competition, and implausible that it would succeed at that strategy. As noted, the Commission seeks comment on these tentative conclusions. The Commission also tentatively concludes that the spectrum made available for 24 GHz may be inadequate to enable the provision of competitive multi-channel video programming distribution (MVPD) service, and that incumbent cable company acquisition of these licenses does not raise anti-competitive concerns. The Commission bases this conclusion in part on Teligent's current service offerings, which are generally limited to voice and data, as well as its own assessment. The Commission also relies on the number of licenses (five) available in each geographic area to check anti-competitive conduct by cable operators. Nevertheless, the Commission does note, however, that cable companies are increasingly offering high speed internet access, a service offering that Teligent is currently providing. The Commission's concerns about anti-competitive behavior by cable companies is substantially attenuated by the existence of alternative sources of such internet access, including digital subscriber lines, fixed wireless applications, and satellite. Furthermore, the cable companies are also subject to the restrictions in the LMDS service, which the Commission has noted herein. The Commission, therefore, tentatively concludes that it is unnecessary to impose eligibility restrictions on incumbent cable operators

3. Foreign Ownership Restrictions

22. Certain foreign ownership and citizenship requirements are imposed in sections 310(a) and 310(b) of the Communications Act, as modified by the 1996 Act, that restrict the issuance of licenses to certain applicants. The statutory provisions are implemented in § 101.7 of the Commission's Rules and reflect the restrictions as they must be imposed on 24 GHz license applicants. Specifically, § 101.7(a) prohibits the granting of any license to be held by a foreign government or its representative. § 101.7(b) prohibits the granting of any common carrier license to be held by individuals who fail any of the four citizenship requirements listed in the rule. *See* 47 CFR 101.7(b).

23. Based on the prohibitions set forth in § 101.7(a), the Commission concludes that neither a foreign government, nor its representative can hold a license, including either a common carrier or non-common carrier license, to operate in the 24 GHz band. In addition, the Commission concludes that § 101.7(b) prohibits any individual who fails to meet the four citizenship requirements set forth therein from holding a license to operate as a common carrier in the 24 GHz band. Further, any individual who elects both common carrier and non-common carrier status must comply with § 101.7(b)'s four citizenship requirements. But, since the prohibitions set forth in § 101.7(b) do not apply to non-common carriers, an individual may elect to hold a license, as a non-common carrier in the 24 GHz band, without complying with the four citizenship requirements, as long as the individual is still in compliance with the requirements set forth in § 101.7(a). *See* 47 CFR 101.7(b)(4); *See* also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market and Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order and Order on Reconsideration,* (''Foreign Participation Report and Order''), 62 FR 64741 (December 9, 1997).

24. To assist its analysis of alien ownership restrictions, the Commission tentatively concludes that applicants in the 24 GHz band shall file FCC Form 430. This requirement is identical to the information which the Commission requires MDS, satellite, and LMDS applicants to submit in order to assess the alien ownership restrictions under § 101.7(b). Furthermore, both common carriers and non-common carriers would be required to file the information whenever there are changes to the foreign ownership information, as well as the other legal and financial qualifications. The Commission would not disqualify an applicant requesting authorization exclusively to provide non-common carrier services solely because its citizenship information reflects that it would be disqualified from a common carrier license. However, consistent with what the Commission stated in the *Satellite Rules Report and Order* and in the *LMDS Second Report and Order,* the Commission tentatively concludes that requiring non-common carriers to address all the alien ownership prohibitions better enables the Commission to monitor all of the licensed providers in light of their ability to provide both common and non-common carrier services. The Commission requests comment on this proposal.

4. Aggregation, Disaggregation and Partitioning

25. The Commission proposes to permit 24 GHz licensees to partition their service areas and to aggregate and disaggregate their spectrum. The Commission believes that such an approach would serve to promote the efficient use of the spectrum. The Commission thus tentatively concludes that partitioning and spectrum disaggregation will provide a means to overcome entry barriers through the creation of licenses for smaller geographic areas that require less capital, thereby facilitating greater participation by, and economic opportunity for, smaller entities such as small businesses, rural telephone companies, and businesses owned by minorities and women, as required by section 309(j)(4)(C) of the Communications Act. *See* Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees and Implementation of section 257 of the Communications Act—Elimination of Market Barriers, *Report and Order and Further Notice of Proposed Rulemaking,* (''*Partitioning and Disaggregation Report and Order*''), 62 FR 653 (January 6, 1997), 62 FR 696 (January 6, 1997). The Commission requests comment on this conclusion.

26. The Commission also requests comment regarding what limits, if any, should be placed on the ability of a 24 GHz licensee to partition its service area and disaggregate its spectrum. The Commission notes that in the *Partitioning and Disaggregation Report and Order* the Commission permitted both geographic partitioning and spectrum disaggregation by broadband PCS licensees. In the case of broadband PCS service, the Commission decided to permit geographic partitioning along any service area defined by the partitioner and partitionee, and spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and to permit combined partitioning and disaggregation. The Commission concluded that allowing parties to decide without restriction the exact amount of spectrum to be disaggregated will encourage more efficient use of the spectrum and permit the deployment of a broader mix of service offerings, both of which will lead to a more competitive wireless marketplace.

27. The Commission requests comment regarding whether such an approach should apply to 24 GHz licenses. If commenters take the position that such an approach should apply, they should also address what information should be filed with the Commission to allow us to maintain our licensing records.

5. License Term and Renewal Expectancy

28. The Commission proposes that the 24 GHz license term for both incumbent and new licensees be 10 years, with a renewal expectancy similar to that afforded PCS and cellular licensees. In the case of either a cellular or PCS licensee, a renewal applicant shall receive a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Act and applicable Commission rules and policies. *See* 47 CFR 22.940(a)(1)(i). While preferring a substantial service requirement, the Commission also invites comment on whether a build-out requirement is more appropriate for this service. The Commission believes that this 10-year license term, combined with a renewal expectancy, will help to provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this frequency band. The Commission also seeks comment on whether a license term longer than 10 years is appropriate to achieve these goals and better serve the public interest. Commenters who favor a license term in excess of ten years should specify the appropriate license term and include a basis for the period proposed.

29. The Commission proposes that the renewal application of a 24 GHz licensee must include at a minimum the following showings in order to claim a renewal expectancy:

- A description of current service in terms of geographic coverage and population served or links installed and a description of how the service complies with the substantial service requirement.
- Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.
- If applicable, a description of how the licensee has complied with the build-out requirement. These proposed requirements are based on those the Commission ordered for LMDS. *See* 47 CFR 22.940(a)(1)(i).

30. Under the Commission's proposal, in the event that a 24 GHz license is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term, and the partitionee or disaggregatee will be required to demonstrate that it has met the substantial service, or build-out standard, requirements in any renewal application. The Commission believes that this approach, which is similar to the partitioning provisions it adopted for MDS and for current broadband PCS licensees, is appropriate because a licensee, through partitioning or disaggregation, should not be able to confer greater rights than it was awarded under the terms of its license grant. *See* Amendment of parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order,* 60 FR 36524 (July 17, 1995); *See Partitioning and Disaggregation Report and Order*.

C. Operating Rules

1. Performance Requirements

31. The Commission seeks comment on whether licensees in the 24 GHz band should be subject to a substantial service requirement or a minimum coverage requirements as a condition of license renewal. The Commission imposed such requirements on licensees in other services to ensure that spectrum is used effectively and service is implemented promptly.

32. The Commission seeks comment on whether 24 GHz licensees should be required to provide ''substantial service'' to the geographic license area within ten years or any other license term which the Commission adopts for this service. The Commission defined substantial service as ''service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. *See e.g.* 47 CFR 22.940(a)(1)(i). Further, as an alternative, safe harbor standard, the Commission seeks comment on whether there should be a construction requirement that the licensee transmit to reach a minimum of one-third of the population in their licensed area, no later than the mid-point of the license term and two-thirds of the population by the end of the license term. The Commission also seeks comment on whether, in the event that a 24 GHz license is partitioned or disaggregated, a partitionee or disaggregatee should be bound by the standard, either substantial service or a construction requirement, which the Commission may adopt in this proceeding.

33. If a licensee does not comply with whichever standard the Commission adopts, either substantial service or minimum coverage, the Commission must consider what action to take. The Commission could adopt a standard whereby a licensee who does not comply with the appropriate standard, either substantial service or minimum coverage, is subject to license termination upon action by the Commission or alternatively, the license would automatically cancel. The Commission seeks comment on whether to adopt an automatic cancellation standard or cancellation only upon action by the Commission. If the geographic licensee loses its license for failure to comply with coverage requirements, should the licensee be prohibited from bidding on the geographic license for the same territory in the future? Is there a sanction more appropriate than automatic cancellation?

2. Application of Title II Requirements to Common Carriers

34. The Commission also seeks comment on whether it should forbear from applying certain obligations on common carrier licensees in the 24 GHz band pursuant to section 10 of the Act. In the case of commercial mobile radio service (''CMRS'') providers, the Commission concluded that it was appropriate to forbear from sections 203, 204, 205, 211, 212, and most

applications of section 214. *See* also In the Matter of Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, *Memorandum Opinion and Order and Notice of Proposed Rulemaking,* (''Forbearance Order'') 63 FR 43033 (August 11, 1998), 63 FR 43026 (August 11, 1998). The Commission, however, declined to forbear from enforcing other provisions, including sections 201 and 202. The Commission has also exercised its forbearance authority in permitting competitive access providers (''CAPS'') and competitive local exchange carriers (''CLECs'') to file permissive tariffs. The Commission seeks comment on whether it is appropriate to forbear from enforcing any provisions of the Act or the Commission's rules in the 24 GHz band.

D. Technical Rules

35. As discussed, the Commission's general proposal is to apply the rules in part 101 to govern the use of the 24 GHz band, except as they may be modified as a result of this proceeding. This would include technical parameters such as channelization, frequency tolerance and stability, power and emission limitations, antennas, and equipment authorization. Also, general provisions of part 101, such as environmental and radio frequency (RF) safety requirements, and the protection of quiet zones, would be applicable.

36. The technical parameters for operations at 24 GHz were adopted in the *Reallocation Order.* As discussed there, such parameters were derived, for purposes of expedience, from those applied to operations at 18 GHz , and may not have been exactly suited to operations at the higher 24 GHz band. The use of the higher frequency band is, for example, one reason for the change in channelization. The Commission has little information in the record at this time, however, on which to propose other specific changes to the part 101 rules. New developments in fixed technology, besides those generated by the transition to a new band, may warrant other changes in the technical parameters. Moreover, changes and advancements in technology may, in the future, warrant use of this band for not only digital modulation, but also other modulations. In that connection, it is not the Commission's intent to impose technological requirements which may in the future restrain more efficient and innovative use of this spectrum. Therefore, the Commission solicits comment regarding whether this service should be limited to digital modulation and whether further development of service at 24 GHz will be facilitated by technical parameters different from those that are currently in part 101. Regardless of the final set of technical rules adopted in this proceeding, the Commission proposes that they all apply to all licensees in the 24 GHz band, including licensees that acquire their licenses through partitioning and disaggregation. But, none of the proposed rule changes are directed at, nor intended to apply to DEMS licensees that operate in the 10 GHz band. While it is the Commission's tentative view that most technical issues are addressed by the current rules, there is one specific technical issue that warrants some attention and is therefore discussed. The Commission solicits comments, however, on all technical parameters that should apply to operations at 24 GHz.

1. Licensing and Coordination of 24 GHz Stations

37. With one exception, incumbent licenses have been granted, by waiver, on an area wide basis. However, nodal stations, which serve as the central or controlling station in a radio system operating on point-to-multipoint frequencies, must be specifically applied for by licensees and authorized by the Commission. *See* 47 CFR 101.3 and 47 CFR 101.503. This could be viewed as a dual licensing situation and may not be necessary or administratively efficient. § 101.103(d) of the Commission's Rules contains guidelines for the current frequency coordination process for Fixed Microwave Services, while § 101.509 of the Commission's Rules sets forth interference protection criteria for 24 GHz licensees. These two rule sections have similar goals: to facilitate interference-free operations, to ensure cooperation among licensees to minimize and resolve potential interference problems, and to obtain the most efficient and effective use of the spectrum and authorized facilities. The Commission intends to auction the remaining spectrum in geographic areas and believes that licensees must be assured a reasonable and effective use of their own areas, while equally protecting the interests of other licensees.

38. The Commission tentatively concludes that a requirement to coordinate those 24 GHz nodal stations located within the boundaries of a licensed SMSA or other geographic licensing area prior to putting them into operation would be sufficient to achieve these goals, and therefore proposes to replace the individual licensing of nodal stations with a coordination requirement. Such coordination would be required with co-channel 24 GHz licensees in adjacent geographic areas and with adjacent channel 24 GHz licensees in adjacent geographic areas, as well as the same or overlapping area. Based on propagational characteristics at 24 GHz, the Commission's information on planned system configurations, the current technical parameters and similar distances adopted in Commission proceedings regarding other microwave bands, the Commission tentatively concludes that the 80 km coordination distance currently specified in our rules appears to be too large. *See* § 101.103(g) and 101.103(I) of the Commission's Rules, 47 CFR 101.103(g), 101(i). However, the Commission proposes to have each licensee coordinate with licensees in other relevant areas and develop agreements between systems. Instead of specifying a fixed distance, the Commission proposes that licensees coordinate their facilities whenever their facilities have line-of-sight into other licensees' facilities or are within the same geographic area. Under the Commission's proposal, both types of coordination must be successfully completed before operation is permitted. In the event that there is no 24 GHz licensee immediately available in an adjacent, same or overlapping area, the licensee must be prepared to coordinate its stations in the future in order to accommodate other licensees to ensure cooperative and effective use of the spectrum in each area. The Commission solicits comment on these coordination procedures and criteria.

39. International coordination is also an issue that needs to be addressed. While no specific proposals are made at this time, operations at 24 GHz in the United States will be subject to any agreements reached with Canada and Mexico. The Commission is in the process of holding discussions with these countries to determine the types of coordination that would be necessary.

2. RF Safety

40. The Commission proposes that licensees and manufacturers be subject to the RF radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules, which lists the services and devices for which an environmental evaluation must be performed. *See* 47 CFR 1.1307(b), 2.1091, 2.1093. *See* also Guidelines for Evaluating the

Environmental Effects of Radiofrequency Radiation, *Report and Order*, (''*RF Guidelines Report and Order*''), 61 FR 41006 (August 7, 1996); *First Memorandum Opinion and Order*, 62 FR 3232 (January 22, 1997); and *Second Memorandum Opinion and Order*, 62 FR 47960 (September 12, 1997). The Commission tentatively concludes that routine environmental evaluations for RF exposure should be required in the case of fixed operations, including base stations, when the effective radiated power (ERP) is greater than 1,000 watts.

41. The Commission proposes to treat services and devices in the 24 GHz band in accordance with the Commission's exposure limits in OET Bulletin 65, which has replaced OST Bulletin No. 65.

E. Competitive Bidding Procedures

1. Statutory Requirements

42. The Balanced Budget Act of 1997 amended section 309(j) of the Act to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, with very limited exceptions. Section 309(j)(2) exempts from auctions licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestrial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations. Thus, if not exempted by the statute, a service will be auctionable if the Commission implements a licensing process that permits the filing and acceptance of mutually exclusive applications. In establishing particular licensing schemes or methodologies, the Commission is required to consider the public interest objectives described in section 309(j)(3).

43. Pursuant to section 309(j)(6)(E) of the Act, the Commission has an ''obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.'' In the Balanced Budget Act, Congress highlighted the Commission's obligation under section 309(j)(6)(E) by referencing that obligation in the general auction authority provision. The Commission recently sought comment on whether that reference changes the scope or content of the Commission's obligation under section 309(j)(6)(E). *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, (''BBA NPRM''), 64 FR 23571 May 3, 1999. In determining whether to resolve mutually exclusive applications for licenses in the 24 GHz band through competitive bidding, the Commission intends to adhere to any conclusions it reaches in the Balanced Budget Act proceeding regarding the scope of our auction authority.

44. In paragraphs 8 and 9, *supra*, the Commission proposed to continue the use of a geographic area licensing scheme for the 24 GHz band, using EAs instead of SMSAs. Because the Commission has tentatively concluded that it would serve the public interest to implement a licensing scheme under which mutual exclusivity is possible, it also tentatively concludes that mutually exclusive initial applications for the 24 GHz band must be resolved through competitive bidding. The Commission seeks comment on this tentative conclusion.

2. Incorporation of Part 1 Standardized Auction Rules

45. In the *Part 1 Third Report and Order*, the Commission streamlined its auction procedures by adopting general competitive bidding rules applicable to all auctionable services, and, in the same proceeding, issued a *Second Further Notice of Proposed Rule Making* concerning designated entities and attribution rules, among other issues. The Commission proposes to conduct the auction for initial licenses in the 24 GHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Specifically, the Commission proposes to employ the part 1 rules governing designated entities, application issues, payment issues, competitive bidding design, procedure and timing issues, and anti-collusion. These rules would be subject to any modifications that the Commission adopts in relation to the *Second Further Notice of Proposed Rule Making*. The Commission seeks comment on this proposal and on whether any of our part 1 rules would be inappropriate in an auction for this service.

3. Provisions for Designated Entities

46. The Communications Act provides that, in developing competitive bidding procedures, the Commission shall consider various statutory objectives and consider several alternative methods for achieving them. Specifically, the statute provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall:

> promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

47. In the *Competitive Bidding Second Memorandum Opinion and Order*, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Memorandum Opinion and Order*, (''*Competitive Bidding Second Memorandum Opinion and Order*''), 59 FR 44272 (August 26, 1994). The *Part 1 Third Report and Order*, while it standardizes many auction rules, provides that the Commission will continue a service-by-service approach to defining small businesses. For the 24 GHz band, the Commission proposes to adopt the definitions the Commission adopted for broadband PCS for ''small'' and ''very small'' businesses, which the Commission also adopted for 2.3 GHz and 39 GHz applicants. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, 59 FR 63210 (December 7, 1994). *See* 47 CFR 27.210(b)(1)(2), 101.1209(b)(1)(i). The Commission tentatively concludes that the capital requirements are likely to be similar to the capital requirements in those services. Specifically, the Commission proposes to define a small business as any firm with average annual gross revenues for the three preceding years not in excess of $40 million. For entities who qualify as a small business, the Commission proposes to provide them with a bidding credit of 15%. *See* 47 CFR 1.2110(e)(2)(iii).

48. The Commission observes that the capital costs of operational facilities in the 24 GHz band are likely to vary widely. Accordingly, the Commission seeks to adopt small business size standards that afford licensees substantial flexibility. Thus, in addition to its proposal to adopt the general small business standard the Commission used in the case of

broadband PCS, 2.3 GHz, and 39 GHz licenses, the Commission proposes to adopt the definition for very small businesses used for 39 GHz licenses and for the PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million. For entities who qualify as a very small business, the Commission proposes to provide them with a bidding credit of 25%. *See* 47 CFR 1.2110(e)(2)(ii).

49. The Commission seeks comment on the use of these standards and associated bidding credits for applicants to be licensed in the 24 GHz band, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each license. In discussing these issues, commenters are requested to address the expected capital requirements for services in the 24 GHz band. Commenters are invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate definitions for small and very small businesses.

50. The Commission seeks comment here on whether there are any actions specific to the 24 GHz service that should be taken to insure that this service will be provided in rural areas. Relatedly, the Commission notes that section 309(j) requires the Commission to ''promote * * * economic opportunity for a wide variety of applicants, including * * * rural telephone companies.'' Consistent with this mandate, the Commission seeks comment on whether there are specific measures that should be taken with respect to these entities.

Procedural Matters

A. Initial Regulatory Flexibility Analysis

51. As required by § 603 of the Regulatory Flexibility Act (RFA) of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *NPRM*. The IRFA is set forth in Appendix A. The Commission requests written public comment on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in our IRFA regarding the prevalence of small businesses in the affected industries.

52. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Consumer Information Bureau, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act.

B. Comment Dates

53–55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 19, 2000, and reply comments on or before February 7, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order,* 63 FR 24121 (May 1, 1998); Electronic Filing of Documents in Rulemaking Proceedings, *Memorandum Opinion and Order,* 63 FR 56090 (October 21, 1998). All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, with a copy to Howard Davenport, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

58. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

Ordering Clauses

59. Accordingly, these actions are taken pursuant to sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, 309(j) and that notice is hereby given of the proposed regulatory changes described, and that comment is sought on these proposals.

60. This *NPRM* is hereby adopted and that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat 1164, 5 U.S.C. 601–612.

List of Subjects

47 CFR 1

Administrative practice and procedure.

47 CFR 2 and 101

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment—Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small and very small entities of the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM.

Reason for Action

This rulemaking is being initiated to adopt certain licensing and service rules for the 24 GHz band, to auction 24 GHz spectrum not used by Digital Electronic Message Service (DEMS) licensees relocated from the 18.82–18.92 and 19.16–19.26 GHz bands (18 GHz band) to the 24.25–24.45 and 25.05–25.25 GHz bands (24 GHz band).

Objectives

The Commission's objectives are: (1) to accommodate the introduction of new uses of spectrum and the enhancement of existing uses; and (2) to facilitate the awarding of licenses to entities who value them the most.

Legal Basis for Proposed Rules

The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308 and 309(j).

Description and Estimate of Small Entities Subject to the Rules

The rules will affect incumbent licensees who are relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band.

The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. The Commission believes that there are only two licensees in the 24 GHZ band that will be relocated, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, although this may change in the future. On the other hand, TRW is not a small entity. The Commission therefore believes that only one licensee in the 24 GHz is a small business entity. The Commission seeks comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be relocated.

The proposals also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, the Commission also proposes to use the small entity definition adopted in the Broadband PCS proceeding. With regard to ''very small businesses'' the Commission proposes to adopt the definition used for 39 GHz licenses and for the PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million.

The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of our lack of knowledge of the entities that will seek 24 GHz licenses, the Commission therefore assumes that, for purposes of its evaluations and conclusions in the Initial Regulatory Flexibility Analysis, all of the prospective licensees are either small or very small business entities.

The Commission invites comment on this analysis.

Reporting, Recordkeeping, and Other Compliance Requirements

Applicants for 24 GHz licenses will be required to submit applications. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

The Commission has reduced burdens wherever possible. To minimize any negative impact, however, it proposes certain incentives for small and very small entities that will redound to their benefit. These special provisions include partitioning and spectrum disaggregation. The regulatory burdens the Commission has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believes it should adopt.

Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

None.

[FR Doc. 99–32829 Filed 12–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2684, MM Docket No. 99–342, RM–9773]

Radio Broadcasting Services; Pearsall and George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by John R. Furr, requesting the substitution of Channel 281C1 for Channel 281A at Pearsall, Texas, and modification of the authorization for Channel 281A to specify operation on Channel 281C1. To accommodate the substitution at Pearsall, we shall also propose the substitution of Channel 265A for Channel 281A at George West, Texas, and modification of the authorization for Channel 281A accordingly. The coordinates for Channel 281C1 at Pearsall are 28–44–52 and 98–50–13. The coordinates for Channel 265A at George West are 28–24–26 and 98–10–05. Mexican concurrence will be requested for the allotments at Pearsall and George West. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 281C1 at Pearsall.

DATES: Comments must be filed on or before January 24, 2000, and reply comments on or before February 8, 2000.

ADDRESSES: Federal Communications Commission, Washington, 445 Twelfth Street, SW, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John J. McVeigh, 12101 Blue paper Trail, Columbia, Maryland 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–342, adopted November 24, 1999, and released December 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–32802 Filed 12–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2686, MM Docket No. 99–344, RM–9709]

Radio Broadcasting Services; Lampasas and Leander, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed Shamrock Communications, Inc. proposing the reallotment of Channel 255C1 from Lampasas, Texas, to Leander, Texas, as that community's first local service and modification of its license for Station KJFK to specify Leander as its community of license. The channel can be allotted to Leander in compliance with the Commission's Rules at the licensed site for Station KJFK. The coordinates for Channel 255C1 at Leander are 30–43–34 NL and 97–59–23 WL.

DATES: Comments must be filed on or before January 24, 2000, and reply comments on or before February 8, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Amelia L. Brown, Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–344, adopted November 24, 1999, and released December 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–32803 Filed 12–17–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143, N–99–4]

49 CFR Parts 106, 107, and 171

Regulatory Flexibility Act Section 610 and Plain Language Reviews

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules on Rulemaking and Program Procedures and General Information, Regulations, and Definitions to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by March 22, 2000.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket number RSPA–99–5143 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at ''http://dms.dot.gov'' or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. In addition, you can review comments by accessing the Dockets Management System at ''http://dms.dot.gov.''

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of

Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, ''we'') has divided its Hazardous Materials Regulations (HMR; 49 CFR Parts 171 to 180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and a Section 610 Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ends in the fall of 1999; Year 2 (1999) begins in the fall of 1999 and ends in the fall of 2000; and so on.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the review year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN

Year	Title	Regulation	Analysis	Review
1	Incident reports	§§ 171.15 and 171.16	1998	N/A
2	Hazmat Program Procedures General Information, Regulations, and Definitions.	Parts 106 and 107, Part 171	1999	2000
3	Carriage by Rail and Highway	Parts 174 and 177	2000	2001
4	Carriage by Vessel	Part 176	2001	2002
5	Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178	2002	2003
6	Explosives Cylinders	Parts 172, 173, 174, 176, 177, 178 Parts 172, 173, 178, 180	2003	2004
7	Shippers—General Requirements for Shipments and Packagings.	Part 173	2004	2005
8	Specifications for Non-bulk Packagings	Part 178	2005	2006
9	Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
10	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	.....	.....
	Carriage by Aircraft	Part 175	2007	2008

C. Regulations Under Analysis

During Year 2 (1999), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Parts 106 and 107, Rulemaking and Program Procedures, and Part 171, General Information, Regulations, and Definitions.

Part 106, Rulemaking Procedures, includes the following sections:

Section	Title
106.1	Scope.
106.3	Delegations.
106.5	Regulatory dockets.
106.7	Records.
106.9	Where to file petitions.
106.11	General.
106.13	Initiation of rulemaking.
106.15	Contents of notices of proposed rulemaking.
106.17	Participation by interested persons.
106.19	Petitions for extension of time to comment.
106.21	Contents of written comments.
106.23	Consideration of comments received.
106.25	Additional rulemaking proceedings
106.27	Hearings.
106.29	Adoption of final rules.
106.31	Petitions for rulemaking.
106.33	Processing of petition.
106.35	Petitions for reconsideration.

Section	Title
106.37	Proceedings on petitions for reconsideration.
106.38	Appeals.
106.39	Direct final rulemakings.

Part 107, Hazardous Materials Program Procedures, includes the following subparts:

Subpart	Title
Subpart A	General Provisions.
Subpart B	Exemptions.
Subpart C	Preemption—Preemption Determinations and Waiver of Preemption Determinations.
Subpart D	Enforcement—Compliance Orders and Civil Penalties, Criminal Penalties, Injunctive Action.
Subpart E	Designation of Approval and Certification Agencies.
Subpart F	Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers.
Subpart G	Registration of Persons Who Offer or Transport Hazardous Materials.
Subpart H	Approvals, Registrations, and Submissions.

Part 171, General Information, Regulations, and Definitions, includes the following sections:

Section	Title
171.1	Purpose and scope.
171.2	General requirements.
171.3	Hazardous waste.
171.4	Marine pollutants.
171.6	Control numbers under Paperwork Reduction Act.
171.7	Reference material.
171.8	Definitions and abbreviations.
171.9	Rules of construction.
171.10	Units of measure.
171.11	Use of ICAO Technical Instructions.
171.12	Import and export shipments.
171.12a	Canadian shipments and packagings.
171.14	Transitional provisions for implementing requirements based on the UN recommendations.
171.19	Approvals or authorizations issued by the Bureau of Explosives.
171.20	Submission of Examination Reports.
171.21	Assistance in investigations and special studies.

We are seeking comments on whether any requirements in Part 106, 107, or 171 have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the requirements in Parts 106, 107, or 171 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

The National Partnership for Reinventing Government (NPR) has recommended that the federal government develop a more customer-oriented approach, particularly concerning government regulations and publications. The NPR recommendations suggest that agencies simplify and, as appropriate, rewrite rules and regulations in performance-based, plain-language formats.

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

President Clinton issued an Executive Memorandum on June 1, 1998, calling for agencies to write documents using ''easy-to-read design features.'' To ensure the use of plain language, the President directed agencies to use plain language in all new documents, other than regulations, by October 1, 1998, and to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 1999. The President also directed agencies to consider rewriting existing regulations in plain language when they have the opportunity and resources to do so. For an example of a rule drafted in plain language, you can refer to RSPA's notice of proposed rulemaking entitled ''Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures,'' which was published December 11, 1998 (63 FR 68624). This NPRM proposed to rewrite part 106 and Subpart A of part 107 in plain language and to create a new part 105 that would contain definitions and general procedures. We are currently in the process of evaluating comments received in response to the NPRM.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a ten-year period on a schedule consistent with the section 610 review schedule. Thus, our review of parts 107 and 171 under section 610 will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables, that may make the regulations easier to use.

Issued in Washington, DC on December 13, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 99–32888 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 64, No. 243
Monday, December 20, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma Proposed Projects in the Agua/Caballos Analysis Area, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Carson National Forest, El Rito Ranger District is preparing a supplement to the draft environmental impact statement (DEIS) to disclose new information relevant to the analysis of proposed projects in the Agua/Caballos analysis area. Proposed projects include the allocation of old growth, harvesting of trees for sawtimber and forest products, prescribed burning, thinning, construction of new roads and reconstruction or closure of existing roads. A Notice of Intent (NOI) to prepare an environmental impact statement was published in the **Federal Register** on April 22, 1997 (62 FR 195342). A Notice of Availability for the DEIS was published in the **Federal Register** on February 19, 1999 (64 FR 8356).

After further verification on the ground, Alternative C (the preferred alternative) was found to have more miles of new road construction, and Alternatives D and E were found to have more miles of reconstruction, than what was described and analyzed in the DEIS. These new road figures are expected to change the effects analyses for alternatives C–E, especially those associated with soils and watershed. The supplement will disclose the new miles of road construction and reconstruction for alternatives C–F and any environmental consequences related to these new figures. In addition, the supplement will add a new alternative (Alternative G) and its effects to the analysis. Alternative G is being developed in response to comments received from the public on the DEIS.

DATES: It is estimated that the supplement will be completed and distributed by the end of January, 2000. A 45 day comment period will follow. The final environmental impact statement is estimated to be released in April, 2000.

ADDRESSES: The supplement will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Planning. Comments related to the supplement can be sent to the same address.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not projects will be implemented by the Forest Service in the Agua/Caballos analysis area. If so, the Forest Supervisor will decide what projects and where, how and when they will be implemented.

FOR FURTHER INFORMATION CONTACT: Forest Planner, Carson Forest Supervisor's Office (505) 758–6200.

Dated: December 8, 1999.

Gilbert Vigil,

Forest Supervisor, Carson National Forest.

[FR Doc. 99–32899 Filed 12–17–99; 8:45 am]
BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Copper Mountain Resort Trails and Facilities Improvements Plan White River National Forest—Summit County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of Copper Mountain Resort's (CMR) proposed Trails and Facilities Improvements Plan. The proposed development includes the replacement and upgrading of two existing lifts, development of two new lifts, expanding on-mountain snowmaking coverage, creation of additional skiing trails and glades, the renovation and expansion of an existing on-mountain restaurant, construction of a snow-vehicle maintenance shop with fuel storage, the development of two skier warming facilities, and upgrading one existing ski patrol facility.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected individuals may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the proposal and environmental analysis should be received by January 21, 2000.

ADDRESSES: Send written comments concerning this proposal to Michael Liu, Special Project Coordinator, Dillon Ranger District, P.O. BOX 620, Silverthorne, Colorado, 80498. Fax: 970 468–7735. E-mail: Liu__Mike/r2__whiteriver@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Michael Liu, Special Project Coordinator, Dillon Ranger District, P.O. BOX 620, Silverthorne, Colorado, 80498. Phone: 970 262–3440.

SUPPLEMENTARY INFORMATION: The proposed action would increase recreational opportunities at Copper Mountain Resort while remaining within the existing Special Use Permit Boundary. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the U.S. Forest Service and administered by the White River National Forest (WRNF). Many of the proposed projects have been conceptually approved through previous National Environmental Policy Act analysis of the resort's Master Development Plan.

The project is located on National Forest System lands within sections 29, 30, 31, and 32, Township 6 South, Range 78 West, sections 5, 6, and 7, Township 7 South, Range 78 West, section 25, 26, 35, and 36, Township 6 South, Range 79 West, and sections 1, 2, 11, and 12, Township 7 South, Range 79 West, of the 6th Principal Meridian.

The proposed improvements were found to be generally consistent with the White River National Forest Land and Resource Management Plan (Forest Plan) and Regional Guide direction. It was determined that a non-significant Forest Plan amendment may be required

to meet the Visual Quality objective contained within the Management Prescription for the 9A Management Area. The proposed improvements are considered necessary in light of current resort deficiencies, increased visitation experienced over the past decade, and projected future visitation. The ensuing analysis will provide additional site specific detail for portions of the MDP to accommodate changing socio-economic and environmental considerations, and may modify previous approvals shown in the MDP in response to environmental issues.

Over the past five months, a ''Collaborative Frontloaded Interagency Process'' was conducted to establish a cooperative dialogue with various state, local, and federal agencies and to garner their input to the preliminary proposal. Additionally, CMR conducted several public forums allowing the community an opportunity to provide input to the proposal formulation process.

Purpose and Need: Purpose 1: To qualitatively improve Alpine skiing and snowboarding opportunities and bring infrastructure into balance with current use levels.

A. To improve quality, distribution, and circulation of intermediate through expert skiers and riders by enhancing access to and from less accessible terrain.

B. To enhance teaching facilities completing the learning area, and to provide an atmosphere responsive to the needs of beginning level guests.

C. To increase the amount of groomed, gladed terrain, responding to changing skier/boarder preferences, desires for these types of terrain, and develop appropriate management of gladed area throughout the resort.

D. To improve the balance between skiable terrain and existing lift capacity.

E. To improve circulation and address guest expectations for reliable, diverse, high-quality, early-season terrain. Additional snowmaking would provide durable coverage on high traffic, and exposed areas.

F. To increase the quantity, and improve the quality of on-mountain seating, improving the quality of the guest experience, increasing the range of services provided, and minimizing base area congestion.

Purpose 2: To improve operational efficiencies by incorporating technological innovations and through the development, renovation, relocation, and centralization of facilities.

A. To provide a snow vehicle maintenance shop, which can be easily accessed by employees, vehicles, and materials during the winter, and is located closer to the majority of the terrain and facilities being served. Development of a new facility would allow reallocation of the existing shop space to maintenance of the rubber-tired fleet, thus maximizing operational efficiencies. A more centrally located facility would increase operational efficiencies, and increase the effective productivity of the grooming and maintenance fleet.

B. To upgrade and replace aged infrastructure, thereby reducing maintenance requirements, increasing operational efficiencies and reliability, meeting guest expectations, and incorporating modern technologies.

C. To install underground snowmaking infrastructure on trails currently being covered, thereby reducing risks to personnel, decreasing labor requirements, and incorporating current technology resulting in higher productivity.

D. To provide an emergency egress route from Copper Bowl, allowing guest and employee egress in the event of a lift failure, and facilitating rapid evacuation of patients with life-threatening conditions. To provide a ski patrol duty station in the Tucker Mountain pod sized to ensure the appropriate availability of emergency equipment and personnel.

Purpose 3: To integrate ski area development and use with ecological principals such as managing habitats, water resources, forest cover, and connectivity thus maintaining viable plant and animal populations.

A. To ensure projects are designed and implemented to maintain functions and values of critical or unique habitats as identified by resource professionals.

The Proposed Action: The proposed improvements include: the replacement and upgrading of two existing lifts (Alpine and Sierra), development of two new lifts (one on Tucker Mountain and a teaching lift in the Union Creek area), expanding on-mountain snowmaking coverage by approximately 400 acres, creation of additional skiing trails and glades, the renovation and expansion of an existing on-mountain restaurant (Solitude Station), construction of a snow-vehicle maintenance shop with fuel storage, the development of two skier warming facilities, and upgrading one existing ski patrol facility.

Preliminary Issues: Identified preliminary issues include potential forest fragmentation, effects to wildlife, botanical resources, wetlands, water quality, mountain hydrology, and the relationship of the proposed action to future development of adjacent real estate.

Public Involvement: Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to CMR's proposal. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

A public meeting will be held on January 11, 2000 at 5:30 p.m. in the Summit County Commons Building, 37 County Road 1005, Frisco Colorado. The purpose of the meeting will be to provide the public with an opportunity to become more familiar with the proposal and to ask questions. Additional information may also be obtained on the web by accessing: *http://www.fs.fed.us/r2/whiteriver/reading__*room.html

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without names and addresses within thirty (30) days.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in September 2000 and will be available

for public review at that time. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. Completion of the final EIS is anticipated in February 2001.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after the completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

In the Final EIS, the Forest Service is required to respond to substantive comments received during the comment period, which pertain to the environmental consequences discussed in the draft EIS.

Responsible Official: The responsible official is Martha Ketelle, Forest Supervisor for the White River National Forest. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Dated: December 13, 1999.

Martha J. Ketelle,

Forest Supervisor,

White River National Forest.

[FR Doc. 99–32833 Filed 12–17–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on January 19, 2000, at the Mt. Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered focus around orientation and education regarding the Finney Adoptive Management Area (AMA) and include: (1) Issues and opportunities, (2) agency needs, (3) Chinook Salmon and Bull Trout recovery, (4) monitoring processes, and (5) demographics. The meeting will also include a segment of time set aside to discuss other relevant issues such as recent court rulings, the status of the new planning regulations, the status of the national roads policy processes, and the status of the roadless area issue.

The Provincial Advisory Committee provides advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, 2105 State Route 20, Sedro-Woolley, Washington 98284 (360–856–5700, Extension 321).

(Authority: 5 U.S.C. appendix)

Dated: December 14, 1999.

Terry DeGrow,

Acting Forest Supervisor.

[FR Doc. 99–32832 Filed 12–17–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on January 6, 2000 at the Bureau of Land Management, 1300 Airport Lane, North Bend, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Province Advisory Committee (PAC) mission and improving PAC effectiveness; (2) Water Quality Management Planning update; and (3) Public Comment.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: December 14, 1999.

Don Ostby,

Designated Federal Official.

[FR Doc. 99–32831 Filed 12–17–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lower Hamakua Ditch Watershed, County of Hawaii, HI

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Kenneth M. Kaneshiro, Responsible Federal Official for projects administered under the provisions of Public Law 83–566 in the State of Hawaii, is hereby providing notification that a record of decision to proceed with the installation of the Lower Hamakua Ditch watershed project, signed November 1, 1999, is available.

The record of decision documents the intent to implement Alternative 3—Repair and Restoration of the Lower Hamakua Ditch. The project will provide a stable, adequate, and affordable supply of agricultural water to farmers and other agricultural producers in the Lower Hamakua Ditch service area. The improvements will provide structural repair and reduce water losses along the Lower Hamakua Ditch. Twenty-two of the 24 wooden flumes will be replaced with corrugated metal pipe or inverted pipe siphons. Metal I-beams will replace the rotting timber supports. In the open ditch sections, sediment will be removed and the concrete lining will be repaired. The diversion structures at Kawainui, Alakahi, and Koiawe streams will be repaired and modified to prevent structural failure, reduce maintenance requirements, and restore 30 percent of base streamflow to Waipio Valley streams. A 1–MG reservoir will be installed at the Honokaia lateral. The 10–MG Paauilo Reservoir will be lined. Approximately ten lateral distribution systems will be repaired or installed. Hakalaoa Falls will be restored through

the repair of the tunnel behind the falls and removal of the temporary flume structure. A Supervisory Control and Data Acquisition system will be implemented to allow remote data collection and operation of key components. Technical and financial assistance will be provided to Hamakua and Waipio Valley farmers to implement soil and water conservation measures.

The record of decision documents that the Lower Hamakua Ditch Watershed project uses all practicable means, consistent with other essential considerations of national policy, to meet the goals established in the National Environmental Policy Act. The FEIS has been prepared, reviewed, and accepted in accordance with the National Environmental Policy Act.

For further information or single copies of this record of decision contact Kenneth M. Kaneshiro, State Conservationist, Natural Resources Conservation Service, 300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, Hawaii, 96850. Telephone 808–541–2600 ext. 100.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 1, 1999.

Kenneth M. Kaneshiro,

State Conservationist.

[FR Doc. 99–32896 Filed 12–17–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3853, and (202) 482–1279, respectively.

Final Determination

We determine that creatine monohydrate (''creatine'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''). The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1, 1998).

Case History

Since the preliminary determination (64 FR 41375, July 30, 1999), the following events have occurred:

During September and October 1999, we conducted verification of the questionnaire responses of the respondents: Blue Science International Trading (Shanghai) Co., Ltd. (''Blue Science''); Nantong Medicines and Health Products Import and Export Co., Ltd. d/b/a Nantong Foreign Trade Corporation Medicine and Health Products Department (''Nantong''); Shanghai Desano International Trading Co., Ltd. (''Desano''); Shanghai Freemen International Trading Co., Ltd./Shanghai Greenmen International Trading Co., Ltd. (''Freemen''); Suzhou Sanjian Fine Chemical Co., Ltd. (''Sanjian''); and Tianjin Tiancheng Pharmaceutical Co., Ltd. (''Tiancheng''). We also verified information provided by the producers who supplied the respondents with the subject merchandise during the POI, including Jiangsu Shuang Qiang Chemical Co. and Wuxian Agricultural Chemical Factory (collectively ''SQ'') and several other producers whose identities have been treated as business proprietary information and cannot be publicly summarized. We issued reports on our findings of these verifications during October and November 1999.

The petitioner, Pfanstiehl Laboratories, Inc., and the respondents filed case and rebuttal briefs on November 17, 1999, and November 23, 1999, respectively. On November 29, 1999, the Department held a public hearing. On November 30, 1999, pursuant to the Department's request, the petitioner submitted supplemental information regarding the surrogate value of one input. On December 1, 1999, the respondents commented on the supplemental information.

Scope of the Investigation

For purposes of this investigation, the product covered is creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') is July 1 through December 31, 1998, which corresponds to each exporter's two most recent fiscal quarters prior to the filing of the petition.

Nonmarket Economy Country and Market Oriented Industry Status

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*''). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Separate Rates

All responding exporters have requested separate, company-specific antidumping duty rates. Blue Science has stated, and we verified, that it is a trading company which is wholly-owned by persons in Hong Kong. Therefore, in accordance with our past practice, we determine that this exporter qualifies for a separate rate. *See, e.g., Notice of Final Determination of Sales*

at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China, 60 FR 22359, 22360 (May 5, 1995). The other responding exporters have stated, and we verified, that they are privately owned companies with no element of government ownership or control.

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* government control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.''

The Department has analyzed these laws in prior cases and found that they establish an absence of *de jure* control. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472 (October 24, 1995); *see also Notice of Final Results of New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China,* 64 FR 27961 (May 24, 1999). We have no new information in this proceeding which would cause us to reconsider this determination. Accordingly, we determine that, within the creatine industry, there is an absence of *de jure* government control over export pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., Sparklers.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

As discussed in the preliminary determination, the responding exporters claim to have the autonomy to set prices at whatever level they wish through independent price negotiations with their foreign customers without government interference. During verification, our examination of correspondence and sales documentation revealed no evidence that any of the responding exporters' export prices are set, or are subject to approval by, any governmental authority. Based on our review of written agreements and contracts, it appears that these exporters have the authority to negotiate and sign contracts and other agreements independent of any government authority. Moreover, we have determined that the responding exporters have autonomy from the central government in making decisions regarding the appointment of management. Finally, based on our examination of financial records and purchase invoices, we have concluded that the responding exporters retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses.

This information supports a finding that there is an absence of *de facto* governmental control of the export functions of Desano, Freemen, Nantong, Sanjian and Tiancheng. Consequently, we determine that the responding exporters in this investigation should be assigned individual dumping margins.

PRC-Wide Rate

As stated in the preliminary determination, information on the record of this investigation indicates that there may be producers and exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. Also, U.S. import statistics indicate that the total quantity of U.S. imports of creatine from the PRC is greater than the total quantity of creatine exported to the United States as reported by all PRC creatine exporters that submitted responses in this investigation. Given this discrepancy, it appears that not all PRC exporters of creatine responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than those specifically identified below under the ''Continuation of Suspension of Liquidation'' section of this notice. We apply this single rate based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*'').

Use of Facts Available

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with Section 776 of the Act. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Use of facts available is warranted in this case because the exporters other than those under investigation have failed to respond to the Department's questionnaire.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire failed to act to the best of

their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

As adverse facts available, we are assigning the highest margin in the petition, 153.70 percent, which is higher than any of the calculated margins.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (''SAA''), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. As discussed in the preliminary determination, we determine that the calculations set forth in the petition have probative value. *See also* Comment 2.

In addition to the PRC-wide rate, we have also used partial facts available in calculating the dumping margins for two responding exporters. As discussed below in comment 2, certain producers which supplied the subject merchandise Blue Science and Freemen did not provide complete factors of production information. We find that neither Blue Science, Freemen, nor the suppliers in question have cooperated to the best of their abilities in providing complete factors of production information.

Accordingly, as adverse facts available, we have applied a margin of 153.70 percent, the highest margin from the petition, to those sales for which factor information was not provided (*see* Comment 2).

Fair Value Comparisons

To determine whether sales of the subject merchandise by Blue Science, Desano, Freemen, Nantong, Sanjian and Tiancheng to the United States were made at LTFV, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We calculated EP based on packed c.i.f. or c&f prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for billing adjustments, inland freight from the plant/warehouse to port of exit, brokerage and handling in the PRC, marine insurance and ocean freight. Because certain domestic brokerage and handling, marine insurance, and inland freight were provided by NME companies, we valued those charges using surrogate rates from India (*see* ''Normal Value'' section for further discussion). In addition, we made corrections for certain clerical errors found at verification (*see* calculation memoranda for individual respondents).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, March 26, 1999). Moreover, we have determined that both India and Indonesia are significant producers of comparable merchandise. As discussed in the preliminary determination, although we have no information to indicate that India and Indonesia produce creatine, they do produce other products within the same customs heading and other fine chemicals with nutritional characteristics.

For purposes of our final determination, we have continued to rely on India as our primary surrogate country for this investigation. Because India is frequently used as a surrogate in cases involving the PRC, its use in this proceeding enhances predictability, one of the Department's goals in administering the NME provisions (*see* preamble to proposed 19 CFR § 351.408, 61 FR 7308, 7344 (February 27, 1996)). Also, India produces and exports more merchandise than Indonesia under United National Standard International Trade Classification Revised number 514.82, ''carboxyamide-function compounds (including saccharin and its salts) and imine-function compounds,'' the heading which includes creatine. Thus, we have relied primarily on Indian values to calculate NV. When Indian values were not available or determined to be aberrational, we used Indonesian values.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced creatine for the responding exporters during the POI.

To calculate NV, the verified per-unit factor quantities were multiplied by publicly available surrogate values. We then added amounts for labor, overhead, selling, general and administrative expenses (including interest) (''SG&A''), profit, and packing expenses incidental to placing the merchandise in packed condition and ready for shipment to the United States.

We calculated NV based on the same methodology used in the preliminary determination. In addition, we made corrections for certain clerical errors found at verification (*see* calculation memoranda for individual respondents).

3. Surrogate Values

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier. Where distances were reported, we added to Indian and Indonesian c.i.f. surrogate values a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (Fed. Cir. 1997).

For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

(1) *Material Inputs:* Many of the inputs in the production and packing of

creatine are considered business proprietary data by the respondents. Thus, we are unable to discuss individual inputs in this notice. In general, the chemical inputs were valued using data reported in the following sources: *Monthly Statistics of the Foreign Trade of India,* the Indian publication *Indian Chemical Weekly* (''ICW'') and *Monthly Statistics of the Foreign Trade of Indonesia.* For a complete analysis of surrogate values, see ''Factors of Production Valuation'' memoranda dated July 22, 1999 and December 13, 1999.

(2) *Labor:* We valued labor using the method described in 19 CFR § 351.408(c)(3).

(3) *Electricity:* To value electricity, we used the 1995 electricity rates reported in the publication *Energy Prices and Taxes,* 4th quarter 1998. We based the value of coal on prices reported in *Energy Prices and Taxes,* 2nd quarter 1998.

(4) *Overhead, SG&A and Profit:* We based factory overhead, SG&A, and profit on the financial statements of Sanderson Industries, Ltd. (''Sanderson''), an Indian chemical producer (*see* comments 1 and 4).

(5) *Inland Freight:* To value truck freight rates, we used price quotes obtained by the Department from Indian truck freight companies in November 1999. For inland water transportation, we valued boat and barge transportation using the surrogate values provided in an August 1993 cable from the US Embassy Bombay. With regard to rail freight, we based our calculation on price quotes obtained by the Department from an Indian rail freight company in November 1999.

(6) *Packing Materials:* For packing materials we used import values from the *Monthly Foreign Trade Statistics of India; Volume II Imports.*

(7) *Brokerage and Handling:* To value foreign brokerage and handling, we relied on public information reported in the case record for a new shipper review of stainless wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (Sept. 9, 1998).

(8) *Marine Insurance:* For marine insurance, we used public information collected for *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of 1996–1997 Antidumping Administrative Review,* 63 FR 63842, 63847 (Nov. 17, 1998) (*''TRBs–10''*), which was obtained through queries made directly to an international marine insurance provider.

(9) *Ocean Freight:* For ocean freight, we relied on public information used in *TRBs–10,* which was obtained through queries made directly to an international freight provider.

Critical Circumstances

In the preliminary determination, we found that critical circumstances, within the meaning of section 733(e)(1) of the Act, exist for Desano, Freemen and all other PRC exporters except Blue Science, Nantong, Sanjian and Tiancheng. Our decision was based on the analysis of shipment data submitted by the respondents and available import statistics, as well as evidence of importer knowledge of dumping and the likelihood of resultant material injury. As discussed in the preliminary determination, the Department normally considers margins of 25 percent or more and a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

In the final determination, Desano's calculated dumping margin is less than 25 percent. Therefore, because there is no longer sufficient evidence to impute knowledge of dumping, we have reversed our preliminary finding of critical circumstances for Desano. With regard to other exporters, no new information has been provided to warrant a reconsideration of our finding. Therefore, we have determined that critical circumstances exist for Freemen and all other PRC exporters except Blue Science, Desano, Nantong, Sanjian and Tiancheng.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Interested Party Comments

Comment 1: Surrogate Value for Overhead, SG&A and Profit

Blue Science, Freemen, Nantong, SQ and Sanjian argue that the Department should reject the data used in the preliminary determination to calculate factory overhead, SG&A, and profit. The respondents argue that these data from the *Reserve Bank of India Bulletin* (''RBI'') are stale and unreliable because they relate to 1992–1993 and include data drawn from an aggregation of over 600 companies from dissimilar industries. The respondents claim that the Department has rejected the use of RBI data in past cases for these same reasons (*see, e.g., Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of Antidumping Administrative Review,* 62 FR 6189, 6206 (Feb. 11, 1997) and *Pure Magnesium from the PRC,* 63 FR 3085 (Jan. 21, 1998) (''*Magnesium*'')).

Instead, the respondents urge the Department to use the financial statement of an Indian producer of bulk drugs, Kopran Limited (''Kopran''), to derive overhead, SG&A, and profit. While Kopran does not produce creatine, the respondents assert that it is in the same general industry category as creatine and, thus, Kopran's experience is more comparable to the experience of PRC creatine producers.

In the alternative, the respondents argue that the Department should use the data from Sanderson, an Indian producer of sulfuric acid and other chemicals. Sanderson's ratios were used in *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates from the PRC,* 61 FR 68232 (Dec. 27, 1996) (''*Persulfates (Preliminary)*'') (Sanderson's data were not used for the final determination). In that case, according to the respondents, the Department selected Sanderson's industry-specific data over the broad-based RBI data.

The petitioner contends that the Department should continue to use the RBI ratios used in the preliminary determination. The petitioner argues that the financial data of both Kopran and Sanderson are inappropriate because neither company produces creatine. Moreover, use of this data would be contrary to the Department's practice of using publicly available statistical averages rather than relying on company-specific data. *See TRBs-10.* Where the Department has relied on the financial data from a single producer or the average of a small group of surrogate producers, the petitioner contends that the producers involved have been producers of the like merchandise (*see, e.g., Mushrooms; Certain Cut-to-Length Carbon Steel Plate from the PRC,* 60 FR 61964 (Nov. 20, 1997); *Freshwater Crawfish Tail Meat from the PRC,* 62 FR 41347 (Aug. 1, 1997)).

Concerning *Persulfates (Preliminary),* the petitioner contends that the Department used company-specific information in that case only after extensive information was placed on the record concerning the specific production processes of the Indian chemical producers. In the present case, according to the petitioner, no such evidence exists with respect to the

production processes. The petitioner adds that the respondents' ''cherry-picking'' one particular Indian company is inherently unreliable.

Department's Position

It is the Department's preference, where information is available, to derive the overhead, SG&A and profit values from producers of merchandise that is identical or comparable to the subject merchandise. *See* section 351.408(c)(4) of the Department's regulations. Because the RBI data cover a wide range of industries, and because we now information relating to a producer of a narrower category of products which includes comparable merchandise, we have determined that it would be inappropriate to rely on the RBI data used in the preliminary determination.

After reviewing publicly available information submitted for the record and available to the Department in this investigation, we have determined that Sanderson's financial data provide the best basis for valuing overhead, SG&A and profit. The products produced by Sanderson appear to be manufactured using bulk chemical processes, similar to the processes used by the PRC creatine producers. In contrast, Kopran produces high-grade pharmaceutical products. Given this, we have concluded that Sanderson better reflects the overhead, SG&A and profit levels that would be incurred by the producers of creatine.

We disagree with the petitioner's arguments against the use of company-specific data to calculate overhead, SG&A and profit. First, the Department does not require that these ratios be calculated using data from producers of a like product. As noted above, section 351.408(c)(4) of the Department's regulations establishes that, for purposes of valuing manufacturing overhead, general expenses, and profit, the Department normally will use ''non-proprietary information gathered from producers of identical or *comparable* merchandise in the surrogate country'' (emphasis added). Second, the petitioner's assertion that the Department's practice is to use publicly available statistical averages rather than relying on company-specific data is misplaced. While it is correct that we prefer average values for valuing inputs such as raw materials, we prefer producer- or industry-specific data for overhead, SG&A and profit. This is explained in the preamble to the Department's regulations:

> When compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country. For these reasons, we have continued the general schema . . . of relying on publicly available data (which will not normally be producer-specific) for material inputs, while relying on producer- or industry-specific data for manufacturing overhead, general expenses, and profit.

62 FR 27296, 27366 (May 19, 1997). We note that in TRBs-10, cited by the petitioner, the value at issue was labor (prior to the Department's adoption of the present regression-based methodology), rather than overhead, SG&A and profit. Finally, regarding the petitioner's concern that the respondents may have submitted data favorable to them, we note that the petitioner also had the opportunity to submit data relating more specifically to creatine than the RBI data. In any case, since we have not used the Kopran data, the petitioner's point is moot.

Comment 2: Use of Partial Facts Available for Freemen and Blue Science

Freemen and Blue Science argue that the Department's use of adverse facts available for certain sales was overly punitive given that Freemen and Blue Science have cooperated fully in the investigation and that the sales in question account for a small percentage of their total U.S. sales. Freemen and Blue Science assert that section 351.308(a) of the Department's regulations requires that to warrant an adverse inference, the Department must find that the interested party has impeded the investigation. Moreover, Freemen and Blue Science contend that pursuant to section 351.308(e), the Department should consider the factors information submitted by other suppliers of the two exporters because the information meets all conditions of section 782(e) of the Act. The respondents assert that in cases such as *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1994) and *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565 (Fed. Cir. 1990), the courts have consistently held that a company cannot be penalized for failing to provide information that it does not have.

The respondents also argue that the petitioner's petition data, on which the adverse facts available rate was based, cannot be corroborated because the petition data uses the price of a more expensive grade of one chemical input rather than the price of the less expensive industrial grade that is used by all respondents.

The petitioner contends that the Department should continue to apply adverse facts available to the sales for which Freemen and Blue Science have not provided complete and accurate production data. Citing *TRBs-10* (at 61846), the petitioner argues that the suppliers, who are interested parties, have failed to provide factors of production data and, thus, have not acted to the best of their ability. According to the petitioner, both *Allied-Signal* and *Olympic Adhesives* are distinguishable because the cases involved a genuine lack of ability on the part of interested parties to respond. In the instant case, the petitioner contends that there is no evidence on the record demonstrating that the non-responsive suppliers of Blue Science and Freemen were genuinely unable to respond.

Department's Position

We have continued to apply adverse facts available for those Freemen and Blue Science sales for which these exporters did not supply factors of production data. As noted above, in accordance with section 776(b) of the Act, an adverse inference is appropriate where a party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' As further explained below, both Freemen and Blue Science and certain of their suppliers failed act to the best of their abilities in providing factors of production information from those certain suppliers.

As respondents are aware, our practice is to require convincing evidence from exporters claiming that their suppliers cannot supply requested factors of production information. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837, 61846 (November 15, 1999) (''*TRBs–11s*'') (''In this case, we determine that Premier has not acted to the best of its ability. Premier was unable to provide letters from all of its suppliers responding to Premier's request for information.''). While Freemen and Blue Science argue that they did attempt to secure the requested factors information from their suppliers, their explanations are not persuasive. Specifically, Freemen claims that it made repeated demands for this information on one supplier, and that this supplier responded that it would not participate in the investigation. However, Freemen provided no documentation confirming its efforts, or the supplier's refusals. Similarly, Blue Science claims that its supplier only produced the subject merchandise on a trial basis. This is not an adequate

explanation, as the mere cessation of production of a particular product does not mean that relevant records are no longer available. We also emphasize that neither Freemen nor Blue Science provided any additional information regarding their efforts to obtain the requested information upon our application of adverse facts available for these sales in the preliminary determination.

As we explained in *TRBs–11,* suppliers to respondent exporters are interested parties, and their failure to provide factors information prevents the Department from calculating accurate dumping margins. Moreover, we must ensure that an exporter does not benefit by selectively providing factors of production information from low-cost producers. In cases such as this, we are precluded from measuring the costs of those suppliers who refused to cooperate, and cannot assume that their costs resemble those of other suppliers who did cooperate. For this reason, too, an adverse inference in warranted.

In the case of Freemen, even if it is true that the supplier in question refused to provide the necessary information, it is not acceptable for a producer to withhold such information. As there is no acceptable explanation on the record for the supplier's failure to provide factors of production information, an adverse inference in applying facts available is warranted due to the supplier's failure to act to the best of its ability. Similarly, there is no acceptable explanation on the record for the failure of Blue Science's supplier to provide the necessary factors of production information, and therefore, an adverse inference is warranted.

Freemen and Blue Science's argument concerning section 782(e) of the Act is misplaced. Section 782(e) directs the Department to use information submitted by a respondent, where possible, with respect to that respondent. In this case, we have used the factors of production information that was submitted to the extent that is applicable. Section 782(e) of the Act does not, however, direct the Department to apply one company's information to another company. Section 782(e) does not require us to substitute the suppliers' information we have on the record for those suppliers that failed to provide factors of production information.

Finally, we disagree with respondents' contentions that the petition data upon which the adverse facts available rate is based cannot be corroborated due to the fact that the petitioner uses a more expensive grade of one input than do respondents. Because there are a variety of production processes for creatine, it would be inappropriate to isolate the value of a single input in determining whether a petition rate is valid for facts available purposes. Furthermore, the constructed NV used in the petition is generally within close range of NVs calculated in this investigation, suggesting that the petition data do indeed have probative value.

Comment 3: Sales by Desano and Sanjian

Desano argues that certain sales of creatine supplied by Sanjian and exported by Desano should be considered Sanjian's sales and excluded from Desano's U.S. sales data. Desano asserts that the invoices from Sanjian to Desano indicate that Sanjian knew the merchandise was destined for the United States at the time it made the sale to Desano. Additionally, Desano argues out that the sales, which were denominated in U.S. dollars, are the first market-based sales in the chain of distribution for export to the United States. In support of its argument, Desano cites *Polyvinyl Alcohol from the PRC,* 61 FR 14057 (March 29, 1996) and *Fresh Garlic from the PRC,* 62 FR 23758 (May 1, 1997) (''*Garlic*''), where the Department based the exclusion or inclusion of the sale on whether the sale constituted the first market-based sale and whether the supplier had knowledge of the U.S. destination.

Sanjian contends that it properly reported all of its U.S. sales and the sales in question are Desano's sales. Sanjian asserts that its sales were reported based on the contract date as the date of sale because the contract date better reflects the date on which the material terms of its sales were established. According to Sanjian, there was no change in price, quantity or the terms of payment between the contract and the subsequent invoice. Sanjian argues that at the time of the sale to Desano (*i.e.,* the contract date), Sanjian did not know the merchandise was ultimately destined for the United States and was only asked to identify the port of destination on the invoice to Desano.

Department's Position

We agree with Sanjian that the sales in question should be considered Desano's U.S. sales. First, we disagree with Desano that the transaction between Sanjian and Desano is the first market-based transaction. Both Sanjian and Desano are companies located in the PRC, in terms of physical location, place of incorporation and the place of business. As discussed in *Garlic,* our knowledge test ''is restricted with regard to NME cases, since we will not base export price on internal transactions between two companies located in the NME country.'' 62 FR at 23759. Whether Sanjian knew the merchandise was destined for the United States is irrelevant in this instance, as the appropriate starting point for the application of the knowledge test is the first transaction with a market-based entity (*i.e.,* Desano's transaction with the U.S. customer). Accordingly, we have continued to treat these sales as Desano's sales.

Comment 4: Factory Overhead and SG&A Labor

The petitioner asserts that the Department failed to include factory overhead and SG&A labor in its calculations.

The respondents disagree. According to the respondents, they included all relevant labor hours in their initial questionnaire responses. This is evidenced by the fact that at verification, the Department asked that indirect labor be broken down into indirect factory labor, overhead and SG&A labor. To adopt petitioner's position would effectively double-count the labor costs for overhead and SG&A, in respondents' view.

Department's Position

Based upon our verification, we have concluded that factory overhead and SG&A labor hours were not included in the total labor figures. For Tiencheng, although overhead and SG&A labor hours were included in the indirect labor amount used for the preliminary determination, this labor has since been reclassified and removed. Therefore, for our final determination, we have included overhead and SG&A labor in the overhead and SG&A ratios calculated from Sanderson's financial statement. Since only surrogate overhead and SG&A labor hours are included in normal value, there is no double-counting.

Comment 5: Indonesian Import Values

The respondents contend that the Department improperly adjusted Indonesian values. Because Indonesian import values were reported in U.S. dollars, they are not subject to Indonesian inflation and no adjustment is necessary.

The petitioner asserts that the Department has consistently adjusted source data for inflation in numerous NME cases using the wholesale price index (''WPI'') of the country from which the source data is obtained. The petitioner claims that the Indonesian WPI is the best information available to

make this adjustment. Furthermore, the petitioner argues that the stability of the U.S. dollars is irrelevant because the dollar is also subject to inflationary forces.

Department's Position

We agree with the respondents that the Indonesian import statistics were improperly adjusted for inflation in the preliminary determination because we used the Indonesian WPI to make the adjustment. For the final determination, we have adjusted the data (which predates the POI by two-and-a-half years) using the U.S. WPI. This is consistent with our practice in several cases (*see, e.g., TRBs–10).*

Comment 6: Material Input ''A'

The respondents contend that the Department should not use the ICW data to value material input A. First, they argue that the prices listed in ICW for material input A are aberrational when compared to a price quote obtained by the respondents. Second, the ICW data may, in fact, be for a different grade of material input than that used by the respondents. Third, the respondents claim that the ICW data are ''highly suspect'' because they are based on sales by a company with an interest in the outcome of this investigation. The respondents conclude, therefore, that the only public data available to value this input is unusable. For this reason, the respondents ask the Department to construct a surrogate value for material input A by valuing the various inputs used by one respondent in producing material input A.

The petitioner contends that the price quote obtained by the respondents does not prove the ICW data to be aberrational and may even support the ICW price. The petitioner notes that the price quote obtained by respondents is for a 12 percent solution and that the ICW price is for a 50 percent solution. According to the petitioner, when adjustments for differences in concentration are made, the resulting U.S. dollar per kilogram values do not differ enough to prove ICW data aberrational. The petitioner also contends that the respondents' accusation that the ICW data is highly suspect is entirely implausible. Finally, the petitioner asserts that the ICW data are based on sales executed by unrelated companies and reflect arms-length pricing.

Department's Position

We agree with the petitioner that the price quote obtained by the respondents does not prove ICW data to be aberrational. When appropriate adjustments are made to account for the differences in solution concentrations between the prices listed in ICW and in the price quote, the U.S. dollar per kilogram values for material input A are close. Moreover, additional ICW price quotes (provided to the Department by the petitioner upon the Department's request at the November 29, 1999 public hearing) refute the respondents' allegations concerning the legitimacy of the ICW data used in the preliminary determination. Thus, we have no reason to believe that the ICW data do not reflect sales made at arm's-length.

We note that, in a change from our preliminary determination, we have adjusted the ICW price to reflect the different solution concentrations used by the PRC respondents. With this adjustment, and because we have determined that the ICW prices are neither aberrational nor suspect, we do not believe that it is necessary to pursue the alternative methodology suggested by the respondents for valuing this input.

Comment 7: Under-Reported Labor at Tiancheng

The petitioner asserts that Tiancheng under-reported indirect labor due to a mathematical error in its June 2, 1999, questionnaire response. The petitioner further contends that Tiancheng did not report labor hours for one month during the POI and failed to report certain labor that was classified incorrectly as not being related to the production of the subject merchandise. The petitioner urges the Department to include any unreported labor in Tiancheng's labor calculations.

Department's Position

We agree with the petitioner that Tiancheng miscalculated indirect labor in its factors of production response and that labor data for one month of the POI were not reported. However, the two errors mentioned above were corrected during verification.

Concerning petitioner's claim that certain labor was not reported because it was improperly classified as not being related to production of the subject merchandise, we note that the verification exhibit upon which the petitioner has based its argument does not correspond to the factory in question.

Comment 8: Valuation of Inland Shipping Rates

The respondents argue that the surrogate value used by the Department for inland boat rates was incorrect because the rate used by the Department reflects the cost of shipping on large vessels while the respondents used small barges.

Department's Position

The only information on the record with respect to inland boat rates is the value used in the preliminary determination. No parties have submitted any alternative values. Therefore, in the absence of information, we have continued to value inland shipping rates in the same manner as that in the preliminary determination.

Other Comments

The respondents have raised several additional arguments concerning the calculation of inputs that are being treated as business proprietary information. The petitioner did not comment on these issues. We have agreed with the respondents' arguments and have made applicable changes to our calculations for the final determination. Because the proprietary nature of these inputs precludes any meaningful discussion of these comments, we have included the detailed discussion in the respective calculation memoranda for each company, rather than in this notice.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise from the PRC, except for subject merchandise exported by Nantong and produced by its proprietary producer and merchandise produced and exported by Tianjin (which have zero weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after July 30, 1999, the date of publication of the preliminary determination in the **Federal Register**. In addition, for Freemen, as well as for companies subject to the PRC-wide rate, we are directing Customs to continue suspending liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 1, 1999, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with our critical circumstances finding. Furthermore, we will instruct the Customs Service to refund all bonds and cash deposits posted on subject merchandise exported by Desano that was entered or withdrawn from warehouse for consumption prior to July 30, 1999.

The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Blue Science International Trading (Shanghai) Co., Ltd	58.10	No
Nantong Medicines and Health Products Import and Export Co., Ltd	0.00	No
Shanghai Desano International Trading Co., Ltd	24.84	No
Shanghai Freemen International Trading Co., Ltd and Shanghai Greenmen International Trading Co., Ltd	44.43	Yes
Suzhou Sanjian Fine Chemical Co., Ltd	50.32	No
Tianjin Tiancheng Pharmaceutical Co., Ltd	0.00	No
PRC-wide Rate	153.70	Yes

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

We have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32916 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit, for preliminary review results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary review results of the administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (''DRAMs'') from the Republic of Korea, covering the period May 1, 1998, through April 30, 1999, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION: John Conniff, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230, telephone 202/482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act. In addition, unless stated otherwise, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 (1998).

Background

On June 30, 1999 (64 FR 35124), the Department initiated an administrative review of the antidumping duty order on DRAMs from the Republic of Korea, covering the period May 1, 1998 through April 30, 1999. On November 17, 1999, Micron Technology, Inc. (''Micron''), the petitioner, submitted a request for postponement of the preliminary determination on DRAMs from Korea, citing the number and the complexity of the issues involved in the administrative review, including many complex accounting issues.

Postponement of Preliminary Result of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary review results within the original time frame (January 30, 2000) because of the complex legal and methodological issues involved in this review segment (*see* December 10, 1999, Memorandum from Holly Kuga, Deputy Assistant Secretary to Robert LaRussa, Assistant Secretary). Accordingly, the deadline for issuing the preliminary results of this review is now no later than May 30, 2000. The final determination will occur within 120 days of the publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: December 13, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–32793 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–810, A–580–843]

Initiation of Antidumping Duty Investigations: Certain Expandable Polystyrene Resins from Indonesia and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis or Charles Riggle at (202) 482–2336 and (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1999).

The Petitions

On November 22, 1999, the Department of Commerce (''the Department'') received petitions on certain expandable polystyrene resins (''EPS'') from Indonesia and the Republic of Korea (''Korea'') filed in proper form by BASF Corporation, Huntsman Expandable Polymers Company LC, Nova Chemicals Inc., and Styrochem U.S., Ltd., (collectively ''the petitioners''). On December 1 and 3, 1999, the Department received amendments to the petitions.

In accordance with section 732(b) of the Act, the petitioners allege that imports of EPS from the above-mentioned countries are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act, and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions,* below).

Scope of Investigations

The scope of these investigations includes certain expandable polystyrene resins in primary forms; namely, raw material or resin manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm.

Specifically excluded from the scope of these investigations is off-grade, off-specification expandable polystyrene resins.

The covered merchandise is found in the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3903.11.00.00. Although this HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by January 12, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of total production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, there is one domestic like product, which is defined in the ''Scope of Investigations'' section, above. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. No comments were received on this issue. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary (*see Attachments to Initiation Checklist, Re: Industry Support,* December 13, 1999). To the best of the Department's knowledge, the producers who support the petition account for more than 50

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department's decision to initiate these investigations is based.

The petitioners, in determining normal value (''NV'') for Indonesia and Korea relied upon price data contained in confidential market research reports filed with the Department. At our request, the petitioners arranged for the Department to contact the author of the reports to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the author of the market research reports are summarized in *Memorandum to the File: Telephone Conversation with Market Research Firm* dated December 3, 1999. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and factors of production and sources of data for each country named in the petition, *see Initiation Checklist,* dated December 13, 1999. Should the need arise to use, as facts available under section 776 of the Act, any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Indonesia

The petitioners identified PT Risjad Brasali Styrindo, PT Polychem Lindo, Inc., and PT Maspion Polystyrene as producers and exporters of EPS to the United States. For EPS from Indonesia, the petitioners based EP on the average unit value (''AUV'') of the merchandise as derived from the U.S. government's IM–145 data. The petitioners calculated a net U.S. price by subtracting from the AUV estimated costs for foreign inland freight derived from data contained in the confidential market research report.

NV is based upon prices for products which are identical to the products used as the basis for the U.S. price. The petitioners calculated NV by deducting foreign movement charges and domestic packing expenses, and adding U.S. packing expenses. The petitioners did not adjust normal value for differences in credit expenses because in the Indonesian market, the terms and conditions of domestic transactions were ''cash in advance.'' The estimated dumping margins for EPS from Indonesia range from 94.93 to 96.65 percent.

Korea

The petitioners identified Kumho Chemicals Co., Ltd.; LG Chemical, Ltd., Dongbu Hannong Chemical Co., Shin Ho Petrochemical Co., Ltd., Cheil Industries, Inc., and BASF Styrenics Korea, Ltd. as producers and exporters of EPS to the United States. For EPS from Korea, the petitioners based EP either on the AUV of the merchandise as derived from the U.S. government's IM–145 data or on actual invoices to U.S. customers and supporting affidavits from U.S. salespersons. They also relied on data contained in the confidential market research report regarding adjustments and deductions.

For comparisons using actual invoices and affidavits, the petitioners calculated a net U.S. price by subtracting estimated costs for selling agent commissions, U.S. inland freight, port charges, international shipping charges, customs duties, and foreign inland freight. For AUV comparisons, the petitioners deducted foreign market inland freight.

NV is based upon prices for products which are identical to the products used as the basis for the U.S. price. The petitioners calculated NV by deducting foreign movement charges and domestic packing expenses, and adding U.S. packing expenses. The petitioners also adjusted normal value for differences in credit expenses. The estimated dumping margins for EPS from Korea ranged from 43.79 to 89.39 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of EPS from Indonesia and Korea are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like products is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in (1) U.S. market share, (2) average unit sales values, (3) share of domestic consumption, (4) operating income, (5) sales, and (6) capacity utilization.

The allegations of injury and causation are supported by relevant evidence including U.S. Bureau of the Census import data, lost sales, and pricing information. While the petitioners did not submit information on other injurious trends such as a decline in employment, hours worked and wages paid, the Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury,* December 13, 1999).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on EPS from Indonesia and Korea, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of EPS from Indonesia and Korea are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Indonesia and Korea. We will attempt to provide a copy of the public versions of each petition to each exporter named in the petition, as appropriate.

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by no later than January 6, 2000, whether there is a reasonable indication that imports of certain expandable polystyrene resins from Indonesia and Korea are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32917 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121599A]

South Florida Artificial and Natural Reefs–Economic Valuation Study; Proposed Information Collection; Comment Request

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 18, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (301–713–3000, ext. 138) or via Internet at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide local, state and federal agencies in charge of managing the artificial and natural reefs of the coasts of southeast Florida (Palm Beach, Broward, Dade and Monroe Counties) with information on both the market economic impact (e.g., sales/output, income and employment) and non-market economic value (consumer's surplus) associated with reef use. Separate surveys of residents of each county, visitors (non-residents of each county) and recreational for-hire operations will be conducted to estimate the amount of use (measured in person-days) on both artificial and natural reefs, spending in the local economies while undertaking the activities on the reefs, and information that will support estimation of non-market economic-use values using travel-cost- demand models and discrete-choice-contingent valuation methods.

Three surveys are planned:

A. Survey of Local Resident Reef Users: Telephone surveys of 500 boating resident households per county for each of the four counties in the study area will be conducted (Palm Beach, Broward, Dade and Monroe Counties). A computer-aided telephone instrument (CATI) will be used. Samples will be drawn from the State of Florida's boat registration files.

B. Survey of Non Resident Reef Users: Non-residents are defined as people who are not permanent residents of the county where interviewed. Interviewing will be done on-site from a stratified sample of non residents in each of the counties. There will be two separate sampled populations: 1) General Visitors and 2) Boating Visitors. Samples will be stratified by two seasons (e.g., summer and winter) and for boating visitors by activity and mode of boating. Activities include diving and fishing and boat modes include charter, party and own (household) boats.

C. Survey of Recreational for Hire Operations: From previous studies, it was determined that non-resident charter and party boat users did not always know whether they were fishing on artificial or natural reefs. Charter and party operators do know and can provide estimates of the amount of use on both artificial and natural reefs. A survey of charter and party boat fishing and diving operations will be used to gather information on the amount of use on artificial and natural reef use by charter and party boat visitors.

II. Method of Collection

The information will be collected by telephone surveys and personal interviews.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Individuals, business or other for-profit

Estimated Number of Respondents: 9,600

Estimated Time Per Response: 15 minutes for interviews of reef users, 1 hour for surveys of recreational for-hire operations.

Estimated Total Annual Burden Hours: 2,700

Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–32922 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–JE

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Guatemala

December 16, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S.

Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63032, published on November 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 20, 1999, you are directed to increase the current limit for Category 443 to 81,704 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The guaranteed access level for Categories 443 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33070 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

December 14, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2000 through December 31, 2000.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69743), shall be denied entry. However, the Government of the Former Yugoslav Republic of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 63 FR 17156, as amended, published on April 8, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month limit
433	21,224 dozen.
434	10,612 dozen.
435	28,414 dozen.
443	175,099 numbers.
448	63,672 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia. These limits do not apply to products entered under the Outward Processing Program.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated September 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69743), shall be denied entry. However, the Government of the Former Yugoslav Republic of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated April 2, 1998, as amended (63 FR 17156).

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32794 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

December 14, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 2000 through December 31, 2000 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 49 FR 493, as amended, published on January 4, 1984.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,361,841 square meters.
314	1,771,380 square meters.
315	4,262,830 square meters.
333/833	168,831 dozen.
334	408,085 dozen.
335/835	213,855 dozen.
338/339	922,951 dozen.
340	402,862 dozen.
341/840	168,831 dozen.
347/348	720,353 dozen.
350	38,134 dozen.
352	256,794 dozen.
359pt.[1]	921,111 kilograms.
360	2,380,407 numbers.
361	1,586,939 numbers.
369pt.[2]	417,754 kilograms.
410	177,507 square meters.
433/434	9,832 dozen.
435	10,284 dozen.
442	11,910 dozen.
443	91,879 numbers.
444	43,313 numbers.
447/448	23,887 dozen.
604	1,694,478 kilograms.
638/639	870,198 dozen.
640	119,682 dozen.
647/648	206,593 dozen.
666	173,508 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. These limits do not apply to products exported under the Outward Processing Program.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated December 29, 1983, as amended, (49 FR 493).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32795 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

December 14, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes dated December 9 and December 14, 1999, the Governments of the United States and Bangladesh agreed to amend the existing visa arrangement for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, 800–899, produced or manufactured in Bangladesh and exported on and after January 1, 2000. The amended arrangement consolidates existing provisions and new provisions for the Electronic Visa Information System (ELVIS). The Governments of the United States and Bangladesh will implement a 6-month test phase in which, in addition to the ELVIS requirements, shipments will continue to be accompanied by a visa. This notice supersedes the notice and letter to the Commissioner of Customs, as amended, published in the **Federal Register** on November 17, 1988 (53 FR 46484).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Goods integrated into GATT 1994 in Stage II by the United States will not require a visa or ELVIS transmission (see **Federal Register** notice 63 FR 53881, published on October 7, 1998).

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive supersedes the directive issued to you on November 14, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreement on Textiles and Clothing and the Export Visa Arrangement, effected by exchange of notes dated December 9 and December 14, 1999, between the Governments of the United States and Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 2000, entry into the customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, 800–899, including part categories and merged categories, produced or manufactured in Bangladesh and exported on and after January 1, 2000 for which the Government of Bangladesh has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Should additional categories, part-categories or merged categories become subject to import quotas, the entire category(s), part-category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original export license. The original visa shall not be stamped on duplicate copies of the export license. The original export license with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the export license and/or visa may not be used for this purpose.

Visa Requirements

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (the code for Bangladesh is ''BD''), and a six digit serial number identifying the shipment; e.g., 0BD123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official authorized by the Government of Bangladesh.

4. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in Annex A of the Export Visa Arrangement, in the U.S. Department of Commerce Correlation, and in the Harmonized Tariff Schedule of the United States Annotated, or successor document and shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 340–510 DOZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. (For example, quota Category 347/348 may be visaed as ''Cat. ''347/348'' or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as ''Cat. 347,'' but not as ''Cat. 348'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the

shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The categories and units of measure shall be those listed in Annex A of the Export Visa Arrangement and as determined by the U.S. Customs Service.

If the visa is not acceptable then a new correct visa must be obtained from the Government of Bangladesh or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Bangladesh and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any quota requirement. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide the importer a certified copy of that visaed export license for use in obtaining a new correct visaed invoice or a visa waiver.

Only the actual quantity in the shipment and the correct category will be charged to the applicable restraint level.

If a shipment from Bangladesh has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

The Government of the United States will make available to the Government of Bangladesh, upon request, information on the amounts and categories involved for all items subject to quota administered by the U.S. Customs Service.

The complete name and address of a company performing the major production steps in the manufacturing process of the textile products covered by the visa shall be provided on the textile visa document.

ELVIS Requirements:

A. Each ELVIS message will include the following information:

i. The visa number as defined above.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States Annotated or successor documents.

iv. The quantity of the shipment in the correct units of quantity

v. The manufacturer ID number (MID). The MID shall begin with ''BD,'' followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from Bangladesh;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number;

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure;

iv. if the quantity being entered is greater than the quantity transmitted;

v. if the visa number has previously been used, except in the case of a split shipment, or canceled, except when an entry has already been made using the visa number.

C. A new, correct ELVIS transmission from Bangladesh is required before a shipment that has been denied entry for one of the circumstances described above will be released.

D. Notwithstanding the previous paragraph, a visa waiver may be accepted, at the discretion of the U.S. Department of Commerce, in lieu of an ELVIS transmission if the shipment qualifies as a one-time special purpose shipment that is not part of an ongoing commercial enterprise.

E. Shipments will not be released for forty–eight hours in the event of a system failure. If system failure exceeds forty–eight hours, for the remaining period of the system failure, the U.S. Customs Service will release shipments on the basis of the paper visaed document.

F. If a shipment from Bangladesh is allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

G. The U.S. Customs will provide the Government of Bangladesh with a report on visa utilization which is accessible at any time. This report will contain:

a. visa number
b. category number
c. unit of measure
d. quantity charged to quota
e. entry number
f. entry line number

Exempt Certification Requirements

Textiles and textile articles provided for below, which includes Bangladesh items listed in Annex C of the Export Visa Arrangement, will be exempted from the levels of restraint (quotas), visa and ELVIS requirements if they are certified, prior to the shipment leaving Bangladesh, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original exempt certification shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

1. Certain floor coverings: Floor coverings provided for in HTS items 5701.10.1600, 5701.10.4000, 5702.51.2000, 5702.91.3000, 5702.92.0010, 5702.99.1010.

2. Handloomed fabrics, handmade and folklore products:

a. Handloomed fabrics of the cottage industry

b. Handmade textile products made in the cottage industry from handloomed fabrics; and

c. Particular traditional folklore handicraft products as listed in Annex C of the Export Visa Arrangement.

Requirements for exempt certification stamp: Each exempt certification stamp will include the following information:

1. Date of issuance;

2. Signature of issuing official;

3. The basis for the exemption, which shall be noted as:

a. Floor Coverings - HTS number 5701.10.1600 (or whichever HTS number is applicable).

b. Handloomed fabric

c. Hand-made textile product

d. The name of the particular traditional folklore handicraft product (Bangladeshi item) as listed below.

Should a shipment be exported from Bangladesh with an incorrect exempt certification (i.e. the date of issuance, signature or basis for exemption is missing, incorrect or illegible or has been crossed out or altered in any way), then the exempt certification shall not be accepted and entry shall not be permitted until a replacement certification is issued.

Should a shipment be exported from Bangladesh without an exempt certification being issued prior to the date of exportation or the merchandise does not qualify for the exemption, then an exempt certification shall not be accepted and entry shall not be permitted. In such a case, a visa or a visa waiver must be obtained prior to release of any portion of the shipment. If quotas are in force, the shipment will be charged to the appropriate quota level.

Shipments not requiring visas, ELVIS transmissions or exempt certifications:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued $800 or less do not require a visa, an ELVIS transmission or exempt certification for entry and shall not be charged to Agreement levels.

Other provisions:

Except as provided for above, any shipment which is not accompanied by a valid and correct visa and ELVIS transmission, or exempt certification in accordance with the foregoing provisions, shall be denied entry by the Government of the United States unless the Government of Bangladesh authorizes the entry and any charges to the agreement levels.

An invoice may cover visaed merchandise or exempt certification merchandise but not both.

After a six-month test phase is completed, both governments will conduct a joint

assessment and make recommendations regarding the elimination of the visa stamp on the commercial invoice.

Effective on January 1, 2000, neither a visa nor an ELVIS transmission will be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998) A visa and ELVIS transmission will continue to be required for non-integrated products.

The visa stamp remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Merged and Part Categories

Category	Designation in Agreement	Conversion Factor to SME	Unit
Meged Categories			
336 and 636	336/636	37.90	dozen
338 and 339	338/339	6.00	dozen
340 and 640	340/640	20.10	dozen
342 and 642	342/642	14.90	dozen
347 and 348	347/348	14.90	dozen
351 and 651	351/651	43.50	dozen
352 and 652	352/652	11.30	dozen
638 and 639	638/639	12.96	dozen
645 and 646	645/646	30.80	dozen
647 and 648	647/648	14.90	dozen
Part Categories			
369-S	Cotton Shop Towels	8.50	kilograms
369-O	Other Cotton Manufactures	8.50	kilograms

Bangladeshi Items

These are the items that are uniquely and historically traditional Bangladeshi products. All these items mentioned in this list are made from woven fabric. Additional items may be included after consultations and mutual agreement of both Governments.

Embroidered Kaftan — Ankle length loose fitting dress with embroidery around top and bottom with side slits of about 18 inches from the lower hem and with traditional Bangladeshi hand embroidery or hand batik printing.

Panjabi — This is a men's and boys' shirt type garment made from cotton or man-made fabric, plain or colored, hand embroidered, or printed, or batik decorated, or batik printed, without collar and with half or full sleeve, with partial front opening with or without buttons. The tails extend from finger tip to knee. This is a typical Muslim ceremonial dress of Bangladeshi men and boys and has been used from ancient times for Muslim festivals.

Bangladeshi Items—Continued

Bell-Sleeve Evening Blouse — A women's garment traditionally used by Bangladeshi women and girls for covering upper part of the body and traditionally worn under a sari, made from cotton or man-made fabric, patterned or plain, embroidered or printed. A short, tight fitting blouse ending above the waist with untapered half sleeve without collar. This is a women's folklore blouse, having a long Bangladeshi tradition.

Salwar — Plain or designed or printed, loose fitting trousers secured with drawstring or hooks with legs that are straight or baggy with extra fullness at the thighs made from cotton or man-made fiber fabrics, traditionally worn with kameez. Must be imported with a kameez, and, if for women or girls, with a dopatta.

Bangladeshi Items—Continued

Kameez — Long tunic, untapered, plain or printed or embroidered, half, three quarter, or full sleeve, made from cotton or man-made fiber fabric traditionally worn with salwar with length down to knee level, with partial opening with button in front or back. Must be imported with a sawlar, and, if for women or girls, with a dopatta.

Dopatta — A long scarf measuring from 72 to 120 inches long and 36 to 40 inches wide traditionally worn by Muslim women or girls in Bangladesh with salwar and kameez. Must be imported with a salwar and kameez.

Lungi — A traditional garment worn as outerwear from waist-down to ankle, 45 to 50 inches in width and having a circumference of 70 to 80 inches, in tubular form, made from cotton or man-made fiber fabric.

Bangladeshi Items—Continued

Borka	A loose overall, two piece garment dress, ankle length, with hood portion containing veil for covering face worn by Muslim women and girls of Bangladesh when going out of the house. Made from cotton or man-made fiber of a solid color, with a full front opening with buttons.
Kurta	A men's or boys' shirt type garment similar to a panjabi, of mid-thigh length of cotton or man-made fiber fabric, with no collar or a one inch stand up collar, with full or half sleeves, with a partial front opening with or without buttons.
Batwa	Small drawstring pouches used by women and girls for carrying betel nut and small personal things. Printed or hand embroidered.
Nakshi Kantha	Traditional hand stitched, extensively hand embroidered, wall hanging with a design depicting rural life or folklore motifs made from cotton, silk, or man-made fibers.
Batik Wall Hangings	Cut pieces of cotton, silk, or man-made fiber fabric that have been printed using the batik process.

[FR Doc. 99–32797 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 14, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes dated December 10, 1999, the Governments of the United States and Sri Lanka agreed to amend the existing visa arrangement for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, 831–859, produced or manufactured in Sri Lanka and exported on and after January 1, 2000. The amended arrangement consolidates existing provisions and new provisions for the Electronic Visa Information System (ELVIS). The Governments of the United States and Sri Lanka will implement a 6-month test phase in which, in addition to the ELVIS requirements, shipments will continue to be accompanied by a visa. This notice supersedes the notice and letter to the Commissioner of Customs, as amended, published in the **Federal Register** on September 7, 1988 (53 FR 34573).

A description of the textile and apparel categories in terms of Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Goods integrated into GATT 1994 in Stage II by the United States will not require a visa or ELVIS transmission (see **Federal Register** notice 63 FR 53881, published on October 7, 1998).

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive supersedes the directive issued to you on September 1, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreement on Textiles and Clothing and the Export Visa Arrangement, effected by exchange of notes dated December 10, 1999, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 2000, entry into the customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, 831–859, including part categories and merged categories, produced or manufactured in Sri Lanka and exported on and after January 1, 2000 for which the Government of Sri Lanka has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Should additional categories, part-categories or merged categories become subject to import quotas, the entire category(s), part-category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Visa Requirements

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (the code for Sri Lanka is ''LK''), and a six digit serial number identifying the shipment; e.g., 0LK123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official authorized by the Government of Sri Lanka.

4. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in Annex A of the Export Visa Arrangement, in the U.S. Department of Commerce Correlation, and in the Harmonized Tariff Schedule of the United States Annotated, or successor document and shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 340–510 DOZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. (For example, quota Category 347/348 may be visaed as ''Cat. ''347/348'' or if the shipment consists solely of Category 347 merchandise, the shipment

may be visaed as ''Cat. 347,'' but not as ''Cat. 348'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The categories and units of measure shall be those listed in Annex A of the Export Visa Arrangement and as determined by the U.S. Customs Service.

If the visa is not acceptable then a new correct visa must be obtained from the Government of Sri Lanka or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Sri Lanka and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any quota requirement. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide the importer a certified copy of that visaed invoice for use in obtaining a new correct visaed invoice or a visa waiver.

Only the actual quantity in the shipment and the correct category will be charged to the applicable restraint level.

If a shipment from Sri Lanka has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

The Government of the United States will make available to the Government of Sri Lanka, upon request, information on the amounts and categories involved for all items subject to quota administered by the U.S. Customs Service.

The complete name and address of a company performing the major production steps in the manufacturing process of the textile products covered by the visa shall be provided on the textile visa document.

ELVIS Requirements

A. Each ELVIS message will include the following information:

i. The visa number as defined above.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States Annotated or successor documents.

iv. The quantity of the shipment in the correct units of quantity

v. The manufacturer ID number (MID). The MID shall begin with ''LK,'' followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from Sri Lanka;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number;

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure;

iv. if the quantity being entered is greater than the quantity transmitted;

v. if the visa number has previously been used, except in the case of a split shipment, or canceled, except when an entry has already been made using the visa number.

C. A new, correct ELVIS transmission from Sri Lanka is required before a shipment that has been denied entry for one of the circumstances described above will be released.

D. Notwithstanding the previous paragraph, a visa waiver may be accepted, at the discretion of the U.S. Department of Commerce, in lieu of an ELVIS transmission, if the shipment qualifies as a one-time special purpose shipment that is not part of an ongoing commercial enterprise.

E. Shipments will not be released for forty–eight hours in the event of a system failure. If system failure exceeds forty–eight hours, for the remaining period of the system failure, the U.S. Customs Service will release shipments on the basis of the paper visaed document.

F. If a shipment from Sri Lanka is allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

G. The U.S. Customs will provide the Government of Sri Lanka with a report on visa utilization which is accessible at any time. This report will contain:

a. visa number
b. category number
c. unit of measure
d. quantity charged to quota
e. entry number
f. entry line number

Shipments not Requiring visas or ELVIS Transmissions

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued $800 or less do not require a visa or an ELVIS transmission for entry and shall not be charged to Agreement levels.

Other provisions

Except as provided for above, any shipment which is not accompanied by a valid and correct visa and ELVIS transmission shall be denied entry by the Government of the United States unless the Government of Sri Lanka authorizes the entry and any charges to the agreement levels.

After a six-month test phase is completed, both governments will conduct a joint assessment and make recommendations regarding the elimination of the visa stamp on the commercial invoice.

Effective on January 1, 2000, neither a visa nor an ELVIS transmission will be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998) A visa and ELVIS transmission will continue to be required for non-integrated products.

The visa stamp remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Merged and Part Categories

Merged Category	Designation in Agreement	Conversion Factor to SME	Unit
331 and 631	331/631	2.90	dozen pairs
333 and 633	333/633	30.30	dozen
334 and 634	334/634	34.50	dozen
335 and 835	335/835	34.50	dozen
336, 636 and 836	336/636/836	37.90	dozen
338 and 339	338/339	6.00	dozen
340 and 640	340/640	20.10	dozen
341 and 641	341/641	12.10	dozen
342, 642 and 842	342/642/842	14.90	dozen

Merged Category	Designation in Agreement	Conversion Factor to SME	Unit
345 and 845	345/845	30.80	dozen
347, 348 and 847	347/348/847	14.90	dozen
350 and 650	350/650	42.60	dozen
351 and 651	351/651	43.50	dozen
352 and 652	352/652	11.30	dozen
359–C and 659–C	359–C/659–C	10.10	kilograms
638, 639 and 838	638/639/838	13.00	dozen
645 and 646	645/646	30.80	dozen
647 and 648	647/648	14.90	dozen

Part Category	Description
359–C	Cotton Coveralls and Overalls
359–O	Other Cotton Apparel
369–D	Cotton Dishtowels
369–O	Other Cotton Manufactures
369–S	Cotton Shop Towels
659–C	Man-Made Fiber Overalls and Coveralls
659–O	Other Man-Made Fiber Apparel

[FR Doc. 99–32796 Filed 12–17–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the Chicago Mercantile Exchange Oriented Strand Board Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Mercantile (CME or Exchange) has proposed amendments to its oriented strand board (OSB) futures contract. The primary proposed amendments would allow delivery of OSB from storage facilities and allow shipments via truck. The proposal was submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comment must be received on or before January 4, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME oriented strand board futures contract rule amendments.

FOR FURTHER INFORMATION CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5281. Facsimile number: (202) 418–5527. Electronic mail: jforkkio@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed amendments include two substantive revisions to the delivery procedures as well as several minor revisions.

One substantive change is to allow delivery from a storage facility. The amended rules would provide that a delivery unit must be delivered from a single mill or storage facility and must be produced by only one manufacturer. According to the CME, ''this is a normal cash market practice that gives some assurance of product integrity and uniformity to the buyer.

Another significant proposed change is to allow delivery via truck. According to the Exchange.

> Truck shipment is possible by mutual agreement between buyer and seller. Although the buyer is responsible for arranging shipment, the seller may provide the trucks under terms acceptable to the buyer. These terms would include a shipping schedule. If the buyer provides the trucks, however, a shipping interval must be specified by the seller using the dates required by the futures contract. A delivery unit of panels would consist of 3 truckloads. The seller must pick an interval of 4 consecutive business days that may start as soon as the fifth day, and must start no later than the eighth day, after delivery instructions have been received from the buyer.

In addition, the CME is proposing to add the phrase ''wood-based structural-use'' to the commodity specifications for futures contract deliveries. This would clarify the type of panel allowed in deliveries on the futures contract. According to the CME, ''[t]he phrase matches the title of U.S. Department of Commerce product standard PS2–92 that governs the performance standards of OSB panels, as noted in current Rule 7304.A.1.

The Exchange also is proposing to require the buyer who chooses rail shipment to provide a routing to destination that is acceptable to the originating carrier. The CME stated that ''[t]his is necessary to ensure that rail shipment is possible along the entire route chosen by the buyer and matches a provision of the delivery procedures in the current Random Length Lumber futures contract. In the absence of instructions from the buyer, delivery will be made via rail to Chicago.''

The CME stated that current contract calls for the seller to prepay rail freight from the mill to the buyer's destination and then bill the buyer for any excess charges over the freight cost incurred if the shipment were to have been made from the mill to Chicago, using the lowest published freight rate. The CME indicated that, since this language is hard to follow, it proposes to amend the rules to add ''explicit language to detail how the calculation of any excess charges is to be made.''

Another proposed amendment provides that shipping the charges are to be based on the rate for 52-foot 8-inch boxcars. The CME stated that ''this provision means only that the rate charged to the buyer must be for that size boxcar; however, any size boxcar can be used to actually ship the panels.'' According to the Exchange, in cash market transactions, this size of boxcar is commonly used for shipping panels of the amounts, thickness and dimension specified by the OSB futures contract.

The CME also proposes to require that deliverable OSB panels may not be older than 18 months, dated from the transfer of title. According to the Exchange, ''an 18-month span was considered by industry representatives to be long enough to allow for storage programs to be meaningful yet short enough so that panels would retain their fresh appearance and condition.''

Finally, rule 7305 is proposed to be amended by adding a clause allowing

reinspection requests to be made regardless of when the panels were first received. The CME stated that this provision reflects a normal cash market practice ''under PS2–92 for reinspection requests to be honored free of charge by the grading agency if they are made within 6 months of first receipt of the panels.''

The proposed amendments were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on January 21, 2000, 45 days after receipt of the proposals. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100.

Other materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOL, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 14, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–32839 Filed 12–17–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Technical Assistance for Public Participation (TAPP) Application; DD Form 2749; OMB Number 0704–0392.

Type of Request: Extension.

Number of Respondents: 265.

Responses Per Respondent: 1.

Annual Responses: 265.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 1,060.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements. Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will aid communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Affected public: Not-for-profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 14, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32876 Filed 12–17–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice Of Availability Of The National Missile Defense Deployment Draft Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization.

ACTION: Notice of Availability; Extension of Comment Period.

SUMMARY: The Ballistic Missile Defense Organization (BMDO) announced the availability of the National Missile Defense Deployment Draft Environmental Impact Statement (DEIS) on Friday, October 1, 1999 (64 FR 53364). This notice extends the public comment period. All other information remains unchanged.

COMMENTS: Written comments have been extended to [insert 30 days from date of publication]. Inquiries on the DEIS should be directed to: SMDC–N–V (Ms. Julia Hudson), U.S. Army Space and Missile Defense Command, PO Box 1500, Huntsville, AL 35807–3801. Public reading copies of the DEIS will be available for review at the public libraries within the communities where the public hearings will be held and at the BMDO internet site at www.acq.osd.mil/bmdo/bmdolink/html/nmd.html.

Dated: December 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32878 Filed 12–17–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include a discussion of the Defense Labor-Management Relations Evaluation and other related Partnership topics.

DATES: The meeting is to be held January 11, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by January 4, 2000, in order to be considered at the January 11 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, Virginia 22209–5144, (703) 696–6301, select menu #3, ext. 704.

Dated: December 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32879 Filed 12–17–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed Tres Rios Environmental Restoration, Maricopa County, Arizona

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of Availability.

SUMMARY: The Tres Rios study area is 9 miles long and one mile wide, encompassing approximately 5,600 acres. The area gets its name because it is located at the confluence of the Salt, Gila and Agua Fria rivers. The Salt runs into the Gila just upstream of 115th Avenue; the Agua Fria runs into the Gila at the western end of the study area.

The feasibility study showed an opportunity exists ''to restore riparian habitat within the study areas, as well as to address flooding problems and the recreation needs of the study area.'' Following studies of several alternatives, a plan was selected that is technically feasible, economically efficient, and environmentally sound.

The source of water for the river is effluent from the 91st Avenue Wastewater Treatment Plant (WWTP). The study notes the water also can be used for constructed wetlands that would provide areas for new wildlife habitat, education and recreation. The wetlands would further enhance the high quality of water released from the WWTP.

Characteristics of the plan include a regulating wetland to provide a more constant rate of discharge from the 91st Avenue WWTP, constructed wetlands arranged in a line along the north bank of the river, a pipeline leading from overbank wetlands to riparian corridors west of El Mirage Road, open water and marsh areas within the river channel, west of El Mirage Road, large open water/marsh areas along the south side of the river channel, and flood control levees.

The proposed project is expected to have significant beneficial environmental impacts. Restoring native riparian and wetland vegetation to the Salt/Gila River is expected to benefit several native wildlife species and threatened and endangered species. No long-term adverse ecological or environmental health effects are expected due to the proposed environmental restoration. No significant impacts are expected to occur.

FOR FURTHER INFORMATION CONTACT: For further information on the Draft Feasability Report contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix AZ 85012–1936 at (602) 640–2003, and for information on the DEIS contact Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RL, P.O. Box 532711, Los Angeles CA 90053 at (213) 452–3860.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers has prepared a DEIS to assess the environmental effects associated with the proposed Tres Rios environmental restoration. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping

The Army Corps of Engineers conducted a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The meeting was held at the Estrella Mountain Community College, 300 N., Dysart Road, Avondale, Arizona on September 16, 1997.

A public hearing to receive comments on the DEIS will be held in conjunction with the public meeting to present the feasibility report. The public hearings will be held in Tolleson, Arizona on January 10, 2000 from 7 to 9 p.m. at the Tolleson High school Auditorium, 9419 W. Van Buren Street, Tolleson, AZ 85353. The location, date, and time of the public hearing will be announced in the local news media, and separate notice will also be sent to all parties on the project mailing list.

Individuals and agencies may offer information, comments, or data relevant to the environmental or socioeconomic impacts by attending the public hearing meeting, or by mailing the information to Mr. Alex Watt at the address below prior to January 31, 2000. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft DEIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RL, P.O. Box 532711, Los Angeles CA 90053.

Availability of the Draft EIS

Copies of the DEIS are available for review at the following locations:

City of Phoenix, Planning Department, 200 W. Washington Street, 6th Floor, Phoenix, AZ

Arizona State University West Library, 4701 W. Thunderbird Dr., Glendale, AZ

Avondale Library, 328 Western Ave., Avondale, AZ
Buckeye Public Library, 311 N. 6th St., Buckeye, AZ
Central Phoenix Library, 1221 N. Central, Phoenix, AZ
Desert Sage Library, 7602 W. Encanto Blvd., Phoenix, AZ
Estrella Mountain Community College Library, 3000 N. Dysart Rd., Avondale, AZ
Glendale Public Library, 5959 W. Brown, Glendale, AZ
Grand Canyon University Library, 3300 W. Camelback Rd., Phoenix, AZ
Kino Institute and Library, 1224 E. Northern Ave., Phoenix, AZ
Litchfield Park Library Association, 101 W. Indian School Rd., Litchfield Park, AZ
Luke Air Force Base Library, 7424 N. Homer Dr., Glendale, AZ
Sun City Library, 16828 N. 99th Ave., Sun City, AZ
Sun Health Community Education Center & Library, 14501 W. Granite Valley Dr., Sun City Wests, AZ
Tolleson Library, 9555 W. Van Buren St., Tolleson, AZ
Youngtown Library, 12035 Clubhouse Square, Youngtown, AZ
Arizona State University, Hayden Library, Reference Department, Tempe, AZ
University of Arizona, Main Library, Main Reference Department, 1510 E. University, Tucson, AZ
Flood Control District of Maricopa County, 2801 West Durango, Phoenix, AZ
U.S. Army Corps of Engineers, Planning Section C, 3636 N. Central Avenue, Suite 740, Phoenix, AZ
U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 911 Wilshire Boulevard, 14th Floor, Los Angeles, CA

For a copy of the DEIS or for further information, please contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix, AZ 85012–1936 at (602) 640–2003. Written comments on the DEIS can be sent to Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RL, P.O. Box 532711, Los Angeles, CA 80053 or Faxed to him at (213) 452–4204.

Dated: December 13, 1999.

Charles V. Landry,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 99–32883 Filed 12–17–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Grant of Exclusive License or Partially Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Serial Number: 09/197,438
Filing Date: 11/23/98
Title: Low Cost Time Domain Reflectometry System for Bridge Scour Detection and Monitoring

Serial Number: 09/208,444
Filing Date: 12/10/98
Title: Derivative-a-limit Method for Correcting Imagery Distortion

Serial Number: 09/293,781
Filing Date: 04/19/99
Title: Scour Detection and Monitoring Apparatus for use in Lossy Soils

Serial Number: 09/293,771
Filing Date: 04/19/99
Title: Selected Components of water flow fields

Serial Number: 09/229,160
Filing Date: 01/13/99
Title: Vehicle Barrier Assembly

Serial Number: 09/197,437
Filing Date: 11/23/98
Title: Autonomous Upward-Looking Radar Snow Depth Gauge

Serial Number: 09/018,881
Filing Date: 02/05/98
Title: System for Detection of Radioactive Elements And Metals Contaminates in Subsurface soil

Serial Number: 09/176,253
Filing Date: 10/21/98
Title: Low-Lead Leaching Foamed Concrete Bullet Barrier

Serial Number: 09/131,908
Filing Date: 08/10/98
Title: Multiple Pressure Gradient Sensor

Serial Number: 09/178,503
Filing Date: 10/26/98
Title: Telescoping Weir

Serial Number: 09/104,268
Filing Date: 06/25/98
Title: Transmission Line Reflectometer Using Frequency-Modulated Continuous Wave

Serial Number: 09/134,531
Filing Date: 08/14/98
Title: Geocomposite Capillary Barrier Drain

Serial Number: 09/173,674
Filing Date: 10/16/98
Title: Noninvasive Mass Determination Stockpiled Materials

Serial Number: 09/087,801
Filing Date: 06/01/98
Title: Shock-Absorbing Block

Serial Number: 08/929,979
Filing Date: 09/15/97
Title: Foam Controller

Serial Number: 08/929,975
Filing Date: 09/15/97
Title: Helical Optical Fiber Strain Sensor

Serial Number: 08/929,255
Filing Date: 09/15/97
Title: System for Monitoring and Controlling the Level of a Liquid in a Closed Container

Serial Number: 09/105,010
Filing Date: 06/26/98
Title: Self-Aligning Vortez Snow Fence

Serial Number: 09/019,422
Filing Date: 02/05/98
Title: Time Domain Reflectometry System for Real-Time Bridge Scour Detection and Monitoring

Serial Number: 09/131,909
Filing Date: 08/10/98
Title: Method and Apparatus for Treating Volatile Organic Compound Voc and Odor-in Air Emissions

Serial Number: 09/017,728
Filing Date: 02/03/98
Title: Camouflaged Erosion Control Mat

Serial Number: 09/131,897
Filing Date: 08/10/98
Title: Shielded Thermocouple Assembly

Serial Number: 09/131,896
Filing Date: 08/10/98
Title: Polychromic Multi spectral Electrochromic Camouflage Device

Serial Number: 09/132,551
Filing Date: 08/11/98
Title: Large Area Tonedown

Serial Number: 09/131,906
Filing Date: 08/10/98
Title: Method of Producing Artificial Guano

Serial Number: 09/042,503
Filing Date: 03/17/98
Title: Remote Site Monitoring With Digital Image Archiving

Serial Number: 09/181,897
Filing Date: 08/10/98
Title: Shielded Thermocouple Assembly

Serial Number: 09/018,968
Filing Date: 02/05/98
Title: Constant Stress Diffusion Cell With Controllable Moisture Content

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672.

SUPPLEMENTARY INFORMATION: Low Cost Time Domain Reflectometry System for Bridge Scour Detection and Monitoring. An apparatus for detecting and monitoring scouring around a structural member uses time-domain reflectometry (TDR) to measure the level of sediment around a submerged portion of the structural member such as a bridge pier, dock, utility crossing, or similar structure. The apparatus includes a time domain reflectometer which transmits a series of electrical pulses, a sensor which is connected with said time-domain reflectometer, and a signal analyzer which receives and interprets the portion of the electrical pulses reflected back to the source from an interface, such as water/air or water/gravel, to calculate the position of the interface along the sensor. Knowledge of the position of the interfaces before and after a scouring event and of the dielectric constant of the surrounding media allows the user to detect and monitor the level of erosion caused by scouring.

Derivative-a-limit Method for Correcting Imagery Distortion. The present invention is directed to a technique and apparatus for correcting imagery distortion in an optical detector matrix. This class of algorithms attempts to capture, rather than eliminate aspects of non-uniformities intrinsic to the objects being imaged. The derivative as limit algorithms emulate the process of determining a derivative of the iradiance normalized for an optimal (zero) instantaneous field of view for calculating an accurate value of radiance undistorted by nonuniform illumination Scour Detection and Monitoring Apparatus for use in Lossy Soils. A sensor for detecting and monitoring scour in sediment positioned beneath a body of water, which includes a probe at least partially embedded in the sediment. Sensor electronics are superimposed on the probe. Such electronics include a reflectometer, a battery supply and a telemetry transmitter to display an interface boundary between the water and the transmitter. The sensor is particularly well adapted for use in lossy soils.

Title: Selected Components of Water Flow Fields. A method for determining the probable response of aquatic species to selected components of water flow fields, comprising the steps of obtaining data for identifying travel and quantitatively describing behavior of real fish constituting member of a selected aquatic species in a flow field, determining passive transport trajectories of the members of the aquatic species in the flow field to establish a basis from which to determine swim path selections, developing postulated behavioral response of members of the aquatic species to at least one of hydraulic and acoustic stimuli, using statistical rules, and developing a computer utilizing the travel behavior data, the passive transport trajectories, and the postulated behavioral response, to provide a virtual fish. The method further includes the steps of obtaining data on at least one selected hydraulic flow field component to generate a virtual hydraulic flow field, generating a simulative application of a multiplicity of virtual fish to the virtual hydraulic flow field, and tracking and monitoring the virtual fish through the virtual flow field, and summarizing results as to the numbers of virtual fish entering and exiting the virtual flow field, whereby to determine probable efficiency of real fish passage through the real hydraulic flow field.

Autonomous Upward-Looking Radar Snow Depth Gauge. The present invention comprises a flush-with-the-surface, upward-looking autonomous, telemetered microwave radar system which can automatically provide snow depth and stratigraphy (layering in the snowpack) information from a remote field site to a centralized receiver, data acquisition, and storage system. The system comprises an FM–CW radar system provided with a horn antenna aimed upward through a radome. As snow accumulates over the radome, a reflection is produced at the boundary between the snow and the outside air. A difference signal produced by mixing the transmitted and received signals will produce a component whose frequency is proportional to snow depth. Other reflections may be produced at boundaries between snow layers. Data from the system may be telemetered to a centralized collection station. Data may then be processed, along with data from other radar snow gauges, to produce an accurate model of snow pack for a given area.

Vehicle Barrier Assembly. A Vehicle barrier assembly for stopping or restraining a moving vehicle includes a flexible barrier for positioning across a selected terrain and anchoring barriers made of compacted soil, timber, used telephone poles and a concrete wall. An impact absorbing assembly, made of used vehicle tires, is positioned behind the anchoring barrier for absorbing the impact of a moving vehicle.

Method and Apparatus for Repairing Stator Connections On Electrical Generators. A tool for repairing a field pole connection in an electrical generator which includes first and second generally longitudinal major arms each having proximate and distal ends and each having respectively first and second proximate and distal pivot pins. First and second generally longitudinal terminal arms connected respectively to the first and second base arms at the first and second distal pivot pins. An opposed punch and punch receiving recess are positioned respectively on the first and second terminal arms. There is a piston and cylinder combination for laterally moving the first and second proximate pivot pins. A method for using this tool is also disclosed.

Method for Attaching Fabric and Floor Covering Materials to Concrete. A method of attaching a covering material, such as carpeting, to a concrete surface, includes applying a first adhesive over a concrete surface, providing a steel barrier including a plurality of projections extending from the bottom surface thereof, pressing the steel barrier over the adhesive such that the projections are embedded therein, and bonding the covering material over the barrier. The moisture-proof barrier construction of the present invention includes a concrete layer, a steel barrier, which is adhesively mounted to the concrete layer and includes a plurality of projections extending from the bottom surface thereof that are embedded into an adhesive between the concrete layer and the steel barrier. The barrier includes a covering material which is adhesively mounted on the steel barrier. The invention provides an effective technique for attaching a covering material, such as carpeting to a concrete surface, that prevents failing of the adhesive bonding between the covering material and the concrete surface.

System for Detection of Radioactive Elements And Metals Contaminates in Subsurface Soil. A system for detection of radioactive matter and metal contaminants in subsurface media includes a penetrometer adapted gamma detection module for detection of radioactive matter, and x-radiation detection module for detection of the metal contaminants, and a grout injection module. The system includes a surface station comprising a gamma power supply, and x-radiation acquisition and processing facility, and a grout pumping assembly. An umbilical cable interconnects the

gamma detection module and the gamma power supply, the x-radiation power supply, electronic signal conditioning equipment, a data acquisition and processing facility, and a grout pumping assembly. An umbilical cable interconnects the gamma detection module and the gamma power supply, the x-radiation detection module and the x-radiation power supply, the grout injection module and the grout pumping assembly, and the gamma detection module and the x-radiation detection module with the data acquisition and processing facility. The latter is adapted to integrate and parallel process data from the gamma detection module and the x-radiation detection module to provide a realtime, co-registered with depth, identification of the radioactive matter and the metal contaminants.

Low-Lead Leaching Foamed Concrete Bullet Barrier. A method of forming low lead leaching foamed concrete is provided. The method includes the step of dry mixing cement with a suspending agent to form a dry mixture. Water is mixed with a fine aggregate to form an aqueous mixture. The dry mixture is mixed into the aqueous mixture to form a slurry. Calcium phosphate is mixed into the slurry until all constituents are throughly distributed throughout the resulting mixture. The density of the resulting mixture is determined and an aqueous foam is added to the resulting mixture until the density of the resulting mixture is reduced to a desired level. Fibers are mixed into the resulting mixture until the fiber is distributed throughout the final mixture. The final mixture is placed into a mold. The mixture is allowed to harden and cure.

Multiple Pressure Gradient Sensor. Apparatus for studying the variations in hydrodynamic pressure for correlation with fish movement towards and away from zones of danger comprises a hollow winged section having mounted on the surface thereof, piezoelectric sensors, and an accelerometer mounted within the apparatus, for generating electrical signals that are precessed and interpreted by remote electric means.

Telescoping Weir. A telescoping weir for the controlled drainage of contaminated bodies of water, such as confined disposal facilities (CDF), which selectively releases only the relatively clean water while leaving behind a contaminated portion. The weir includes a foundation that is anchored to the bottom of the body of water and connected with a discharge pipe, a cylindrical telescoping portion connected with the discharge pipe and extending upwardly from the foundation and terminating adjacent to the surface of the body of water, and set of mechanical jacks for selectively extending and retracting the upper end of the telescoping portion above and below the water surface in order to selectively drain a top layer of clean decant water therefrom.

Title: Transmission Line Reflectometer Using Frequency-Modulated Continuous Wave. The invention provides apparatus for and a method of locally or remotely monitoring a number of geophysical and other variables related to the refractive index of materials, e.g., soil and pavement moisture content; the moisture content of bulk food products such as grains and beans; liquid levels in storage tanks; interface levels between water and floating layers of oil; the thickness of ice layers; the water/ice interface in partially frozen ground; the location of liquid and gas leaks on roofs, in landfill liners, geosynthetic membranes, and pipelines; and the cables. The detection technique is their propagation along transmission line probes embedded in the material being tested.

Geocomposite Capillary Barrier Drain. A geotechnical structure that includes a first body of soil having a first unsaturated concentration of moisture. There is also a second body of soil, which includes a second unsaturated concentration of moisture that is different from the first concentration. A moisture barrier is interposed between the first body of soil and the second body of soil. The moisture barrier includes an upper and lower layer that draw water laterally. A medial capillary barrier layer prevents transverse moisture migration between the first and second bodies of soil. Moisture migration both upwardly and downwardly is thus prevented, and water in the first and second bodies of unsaturated soil is drained laterally to reduce pore water pressures in the first and second bodies of soil.

Noninvasive Mass Determination Stockpiled Materials. The mass of stockpiled material is determined from detailed measurements of the elevation of the surface of the material at many points and the determination of the gravitational field along several profile lines across the surface of stockpiled material. These measurements allow the calculation of the volume and the bulk density an hence, the mass of stockpiled material.

Shock-Absorbing Block. Shock-absorbing blocks for bullet stops at firing ranges and for traffic control are made by encasing scrap rubber tires in concrete. To ensure firm attachment of the tires to the concrete, reinforcement such as wire loops are fastened to the tire. To prevent the formation of air pockets during the pouring of the concrete mixture into a mold holding the tire, vent holes are punched into the side walls of the tire. To allow the concrete mixture to flow under the tire in the mold, the tire is propped up with support blocks. Wires may be strung across the top of the tire and attached to the side walls of the mold to prevent movement of the tire while the concrete is being poured into the mold. The concrete mixture may contain an aqueous foam additive, a stabilizer, and fiber reinforcements such as steel or organic polymers.

Foam Controller. A system for automatically delivering an anti-foaming agent to a biological waste treatment system includes a sensor for monitoring the amount of foam present in the system, a pump for pumping a predetermined quantity of anti-foaming agent into the system, and controller for initiating the pumping sequence when the quantity of foam in the system reaches a preselected level. The controller includes two relays. The first relay controls the length of time the pump is on, thereby controlling the amount of anti-foam injected into the system, and the second relay establishes a period of time following the pumping period when the pump cannot be activated, thereby providing a period of time for the anti-foam to break down the foam before additional anti-foam can be added.

Helical Optical Fiber Strain Sensor. Strain in concrete is sensed by a helical optical fiber embedded in the concrete and connected at one end to an external light source, and at other end to a light detector, providing a signal output to an information processor, which provides a display of the strain in the concrete.

System for Monitoring and Controlling the Level of a Liquid in a Closed Container. A system for monitoring and controlling the level of liquid in a closed container includes a block for mounting at an upper end of the container, a lower level electrode for extending from the block vertically into the container, and upper level electrode for extending from the block vertically into the container and shorter than the lower level electrode, a valve for venting gas from the container, and a motor for driving the valve. Electric circuitry is responsive to liquid in the container rising to a free end of the upper level electrode, a valve for venting gas from the container, and motor for driving the valve. Electric circuitry is responsive to liquid in the container rising to a free end of the upper level electrode to activate the motor to close the valve to

increase gas pressure in the container to force lowering of the level of liquid, and further electrical circuitry is responsive to the liquid in the container dropping below a free end of the lower level electrode to activate the motor to open the valve to vent the container and reduce gas pressure therein to permit rising of the liquid level.

Self-Aligning Vortez Snow Fence. The invention relates to a passive snow removal system which deliberately forms vortices from a passing airflow and directs the vortices into scouring contact with snow accumulation on a target surface. The apparatus includes a base and a vortex producing plate rotatably mounted at an inclined angle relative to an upper portion of the base near the plate's center of mass. The geometry of the plate, which is preferably triangular, is used to aerodynamically form vortices from a passing airflow and direct the vortices onto a target surface. Once the vortices are in scouring contact with the target surface, they act upon the surface to dislodge and carry away any acculated snow in the direction of the airflow and redeposit it downwind, thus removing the snow from the target surface.

Time Domain Reflectometry System for Real-Time Bridge Scour Detection and Monitoring. An apparatus for detecting and monitoring scouring of a bed of sediment beneath a body of water uses time-domain reflectometry (TDR) to measure the level of sediment adjacent to underwater sensors. The apparatus includes and electrical pulse generator which produces and intermittently transmits a series of electrical pulses along a permanent transmission line arranged adjacent to the area of concern, a timer to measure the travel time of the pulses within the transmission lines, a transmitter for transmitting a radio signal corresponding to the travel times of the pulses, a receiver for receiving the signal, and a signal analyzer which interprets the signal to determine a measurement of scouring. Knowledge of the position of the interfaces before and after a scouring event and the dielectric constants of the surrounding media allows the user to detect and monitor the level of erosion caused by scouring.

Method and Apparatus for Treating Volatile Organic Compound Voc and Odor-in Air Emissions. An air emissions treatment system is characterized by a moving biomass filter element is in the form of one or more endless loops which are conveyed within an enclosed housing. As a section of the filter element passes through the air, it withdraws pollutants therefrom. When the filter passes through the liquid, it receives moisture and nutrients and releases the pollutants into the liquid.

Camouflaged Erosion Control Mat. A mat for covering soil comprising a lower fabric layer, an upper fabric layer superimposed over the lower fabric layer, and a water absorbing material interposed between said lower fabric layer and upper fabric layer. The mat contains tubular segments containing fabric and hydraulically setting cement. The cover, when wetted, becomes ballasted by the absorbed water and the tubular elements harden to form rigid ribs that hold the mat in conformity with the surface of the underlying soil.

Shielded Thermocouple Assembly. A shielded thermocouple assembly includes a mounting pipe having a flange at a first end thereof and extending outwardly therefrom, and a mounting plug having a first end connected to a second end of the mounting pipe, the mounting plug having a recess in a second end thereof defined in part by a circular side wall having at least one opening therein. A fine-wire thermocouple is fixed in the mounting plug and extends into the recess. A rigid shield pipe is disposed concentrically around and space from the mounting pipe, the shield pipe closed by a shield plate proximate the mounting plug second end. An inlet extends through a side wall of the shield pipe in alignment with a side wall of the mounting plug recess, and an outlet extends through the side wall of the shield pipe and is in axial alignment with the inlet. The inlet directs incoming air against a curved portion of the mounting plug which directs the incoming air around the mounting plug past the opening, from whence the air flows to the outlet and out of the assembly. Thus, the incoming air flows past the thermocouple to permit the thermocouple to sense a temperature of the incoming air, but fragments and particles carried by the incoming air are substantially routed away from contact with the thermocouple.

Polychromic Multi-spectral Electrochromic Camouflage Device. An electrochromic camouflage device that includes a first layer of a transition metal oxide material or other suitable conductive material. A second layer of a transition metal oxide material positioned in spaced relation to said first layer of a transition metal oxide material. A layer of an electrochromic polymer is interposed between the first and second layers of transition metal oxide material and is positioned directly adjacent the first transition metal oxide layer.

Large Area Tonedown. A method and composition for multispectral surface treatment includes predetermined proportions of a hydrophilic polymer, hydrophilic fibers and water. The composition is placed in a water vessel, mechanically agitated, pumped through a hose and sprayed out through a nozzle coming to rest against a surface to be treated.

Method of Producing Artificial Guano. High-nitrogen, high-phosphorus fertilizer is produced from animal waste by mixing the waste with water and soft-burned dolomite, recovering ammonia that is liberated with an aqueous acidic medium, neutralizing the mixture, combining the ammonium salt recovered earlier with the mixture, the adding guano-forming bacteria to mixture, and allowing the mixture to ferment.

Remote Site Monitoring With Digital Image Archiving. A camera is used to generate digital pictures of a site to be monitored. The digital pictures are transmitted over the Internet to a remote database server for retrieval and archiving. Users remote from both the site to be monitored and the database server can access the pictures and, if authorized, issue commands to pan and zoom the camera.

Shielded Thermocouple Assembly. A shielded thermocouple assembly includes a mounting pipe having a flange at a first end thereof and extending outwardly therefrom, and a mounting plug having a first end connected to a second end of the mounting pipe, the mounting plug having a recess in a second end thereof defined in part by a circular side wall having at least one opening therein. A fine-wire thermocouple is fixed in the mounting plug and extends into the recess. A rigid shield pipe is disposed concentrically around and spaced from the mounting pipe, the shield pipe begin closed by a shield plate proximate the mounting plug second end. An inlet extends through a side wall of the shield pipe in alignment with a side wall of the mounting plug recess, and an outlet extends through the side wall of the shield pipe and is in axial alignment with the inlet. The inlet directs incoming air against a curved portion of the mounting plug which directs the incoming air around the mounting plug past the opening, from whence the air flows to the outlet and out of the assembly. Thus, the incoming air flows past the thermocouple to permit the thermocouple to sense a temperature of the incoming air, but fragments and particles carried by the incoming air are substantially routed away from contact with the thermocouple.

Constant Stress Diffusion Cell With Controllable Moisture Content. A device

for measuring the concentration changes of a vapor as it diffuses through a porous media comprising a porous central housing having a central space; an outer housing for containment of the central housing and positioned in outward spaced relation from the central housing to form a medial space between said external housing and said internal housing; a first fluid conveying line extending into the central space of the central housing; and a second fluid conveying line extending to the medial space.

Pursuant to 37 CFR 404, 7 (a) (1) (I), any interested party may file a written objection to this exclusive, or partially exclusive licenses agreements.

Richard L. Frenette,

Counsel.

[FR Doc. 99–32882 Filed 12–17–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 13, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Applications for Grants Under the Javits Gifted and Talented Students Education Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 6,000.

Abstract: Applications are required to receive grants under the Javits Gifted and Talented Students Education Program. Program participants include SEAs, LEAs, Institutions of Higher Education, and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian Organizations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–32720 Filed 12–17–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.288S]

Office of Bilingual Education: Program Development and Implementation Grants Program

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 17, 1999, a notice inviting applications for new awards for FY 2000 was published in the **Federal Register** (64 FR 62946 through 62969). This notice was a complete application package and contained all of the information; application forms and instructions needed to apply for a grant under this program. A further notice correcting and supplementing this application package was published on December 10, 1999 (64 FR 69233). The December 10 notice listed an incorrect deadline date of January 17, 2000 for transmittal of applications. January 17, 2000 is a Federal holiday. This notice corrects the deadline date for transmittal of applications and the deadline for intergovernmental review.

Deadline for Transmittal of Applications: January 18, 2000.

Deadline for Intergovernmental Review: March 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cecile Kreins, U.S. Department of Education, 400 Maryland Avenue, SE, room 5611, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5568. Jim Lockhart, U.S. Department of Education, 400 Maryland Avenue, SE, room 6522, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5426. Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SE, room 5619, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Documents Format (PDF) on the Internet at either of the following sites:

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official education of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7422.

Dated: December 15, 1999.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 99–32919 Filed 12–17–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for Financial Assistance Applications Number DE–PS36–00GO10496.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Million Solar Roofs Program for State and Local Partnerships. The selected applicants will receive financial assistance under a grant with DOE.

DATES: The solicitation will be issued in late December, 1999.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.eren.doe.gov/golden/solicit.htm, click on ''solicitations'' and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE's Million Solar Roofs (MSR) Initiative is an initiative to install solar energy systems on one million U.S. buildings by 2010. It was announced by President Clinton on June 26, 1997 in his speech before the United Nations Session on Environment and Development. This effort includes two types of solar energy technology—photovoltaics that produce electricity from sunlight and solar thermal panels that produce heat for domestic hot water, space heating or heating swimming pools. A key strategy of the Initiative is to catalyze market demand in local areas through the establishment of State and Local MSR Partnerships. The Congressional language authorizing these funds specifically directs DOE to use these funds to eliminate barriers to the use of solar energy systems and to support partnerships (See Conference Report 105–749 on the FY 99 Energy and Water Development Appropriation Act). The overall goal of this solicitation is to assist State and Local Partnerships in contributing to the installation of one million solar energy systems on U.S. rooftops by the year 2010.

This solicitation is only open to both existing and new MSR State and Local Partnerships. Those MSR Partnerships that received funding from DOE in Fiscal Year 1999 under the ''Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships'' or the ''State Energy Program Special Projects Solicitation'' are ineligible for an award in FY 2000. These Partnerships bring together business, government and community organizations, (e.g., solar energy educational organizations, or not-for-profit housing agencies) at the regional level with a commitment to install a pre-determined number of solar energy systems. There were forty (40) such existing partnerships under the MSR Initiative, as of October 1, 1999. They received their MSR Partnership designation by writing a letter of commitment to DOE with their goal for actual installations by 2010. In return, DOE provides access to a variety of financing options, training and technical assistance from DOE's existing infrastructure, recognition and support, and a link to solar energy businesses, associations and related industries that can provide assistance. New MSR Partnerships can declare their intent to join the Initiative by including such a letter with their application for this solicitation. A complete description of partnerships and their representative activities can be found on the MSR website at *http://www.MillionSolarRoofs.org.*

DOE's Office of Energy Efficiency and Renewable Energy will only consider proposals from interested State and Local Partnerships to help fund their MSR program development and implementation activities. Grant awards will be managed by the DOE Regional Offices. DOE intends to allocate a portion of total available funding to each of the six DOE regions based on a formula that considers existing partnerships that did not receive funding from DOE in FY 1999 and the potential for new partnerships to be established. Applicants will only be competing against other partnerships in their DOE region.

The project or activity must be conducted in a designated MSR partnership community. Any member of a State or Local Partnership, except industry associations, can apply on behalf of the Partnership, including builders, energy service providers, utilities, non-governmental organizations, local governments, or state governments. The different organizations/offices involved in a State or Local Partnership are encouraged to collaborate on their response to this solicitation. There is no cost-sharing requirement for these grants although cost-sharing will be favorably considered in the selection process. Subject to the availability of funds, 10–25 awards totaling $500,000 (DOE funding) in FY 2000 are anticipated to be awarded as a result of this Solicitation. DOE funding for individual awards will be $10,000 to $50,000 in size. Solicitation number DE–PS36–00GO10496 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned for late December, with applications due on January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ruth Adams, Contracting Officer, at 303–275–4722, e-mail ruth__adams@nrel.gov, or Jerry Kotas, Project Officer, at 303–275–4714, e-mail gerald__kotas@nrel.gov.

Issued in Golden, Colorado, on December 8, 1999.

Jerry Zimmer,

Director, Office of Procurement and Financial Assistance.

[FR Doc. 99–32899 Filed 12–17–99; 8:45 am]

BILLING CODE 6450–01–p

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–8–000]

Dynegy Midstream Pipeline, Inc.; Notice of Tariff Filing

December 14, 1999.

Take notice that on December 9, 1999, Dynegy Midstream Pipeline, Inc. (DMP), tendered for filing as part of its FERC Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 10, 2000:

First Revised Sheet Nos. 3, 58, 59, 80, 93

DMP states that it is submitting these tariff sheets to make certain ''housekeeping changes'' to correct typographical and grammatical errors that existed in the original version of DMP's tariff. DMP states that none of the changes have a substantive effect on DMP's General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23810 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–003]

East Tennessee Natural Gas Company; Notice of Compliance Tariff Filing

December 14, 1999.

Take notice that on December 9, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 9. East Tennessee requests an effective date of January 10, 2000.

East Tennessee states that the revised tariff sheet is being filed in compliance with the Commission's Letter Order issued November 24, 1999 in the above-referenced docket. East Tennessee Natural Gas Company, 89 FERC ¶ 61,221 (1999). East Tennessee further states that the revised tariff sheet modifies Section 4.1 of its FT–A Rate Schedule to allow fixed rates to be stated in either the FT–A Agreement or in a letter agreement corresponding to the FT–A Agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32816 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–92–001]

Northern Border Pipeline Company; Notice of Revision To Proposed Changes in FERC Gas Tariff

December 14, 1999.

Take notice that on December 9, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective January 1, 2000:

Substitute Fifteenth Revised Sheet Number 157

Northern Border proposes to correct the Minimum Revenue Credit from 3.095 cents per 100 Dekatherm-Miles to 2.808 cents per 100 Dekatherm-Miles to reflect the correct amount for debt repayment obligation in the computation of the Minimum Revenue Credit for Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Norther Border's contracted shippers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed..us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32817 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–363–003 and ER99–1165–000]

Southern Company Services, Inc.; Notice of Filing

December 14, 1999.

Take notice that on November 26, 1999, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing Southern Company's refund report pursuant to the Commission's October 14, 1999 letter order.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 27, 1999. Protests will be considered by

the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32818 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–1–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 14, 1999.

Take notice that on December 7, 1999, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective January 7, 2000:

13th Revised Sheet No. 73

Transwestern states that the purpose of this filing is to update Section 19 of Transwestern's General Terms and Conditions of its Tariff to reflect the current status of Transwestern's shared facilities and complaint procedures for purposes of Order No. 497 compliance.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32811 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–9–000]

Venice Gathering System, L.L.C.; Notice of Tariff Filing

December 14, 1999.

Take notice that on December 9, 1999, Venice Gathering System, L.L.C. (VGS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of January 10, 2000:

First Revised Sheet Nos. 0, 2, 61, 74, 97, 109, 300, 312, 325, 333, 339, 350, 375, 400
Second Revised Sheet No. 192

VGS states that it is submitting these tariff sheets to make certain ''housekeeping'' changes to clarify provisions and correct typographical and grammatical errors in the tariff. VGS states that none of the changes have a substantive effect on VGS' General Terms and Conditions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be file as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32809 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR95–136–015]

Williams Gas Pipeline Central, Inc; Notice of Filing of Refund Report

December 14, 1999.

Take notice that on December 8, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report of refunds made to Missouri Public Service Commission (MoPSC) LDCs, which are defined as Missouri Gas Energy, Utilicorp United, Inc., and Greeley Gas Company, pursuant to the Stipulation and Agreement (S&A) filed June 14, 1999 in Docket No. PR95–136.

Williams states that Article I of the S&A specifies that for the period beginning August 1, 1995, and ending on the Effective Date, Williams will refund, within 30 days of the Effective Date, $1 million of principal per year to the MoPSC LDCs. The Effective Date of the S&A was November 1, 1999, therefore, Williams will file a MoPSC LDCs on December 1, 1999. Article I also provides that Williams will file a report of such refunds with the Commission within 15 days of the date on which refunds are made.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 21, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32815 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7454–005]

El Dorado Irrigation District; Notice of Availability of Final Environmental Assessment

December 14, 1999.

An final environmental assessment (FEA) is available for public review. The FEA is to surrender the exemption from licensing for the Weber Dam Hydroelectric Project. The Project is located on the North Fork Weber Creek in El Dorado County, California.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. This document may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32813 Filed 11–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application For a Subsequent License

December 14, 1999.

a. *Type of Filing*: Notice of Intent to File An Application for a Subsequent License.

b. *Project No.*: 4914.

c. *Date Filed*: November 26, 1999.

d. *Submitted By*: International Paper Company-current licensee.

e. *Name of Project*: Nicolet Mill Dam Project.

f. *Location*: At the U.S. Army Corps of Engineers' DePere Dam, on the Fox River, in Brown County, Wisconsin.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act.

h. *Licensee Contact*: Tom Piette, International Paper Company, 2000 Main Avenue, De Pere, WI 54115, (920) 336–4211.

i. *FERC Contact*: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license*: January 1, 1955.

k. *Expiration date of current license*: November 30, 2004.

l. *Description of Project*: The project consists of the following existing facilities: (1) a 13.6 foot-high, 400-foot-long diversion structure attached to the U.S. Army Corps of Engineers' DePere Dam; (2) intake works consisting of 28 gates screened with steel racks; (3) a powerhouse containing two generating units with a total installed capacity of 1,078 kW; and (4) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32812 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

December 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License

b. *Project No.:* P–11727–000.

c. *Date Filed:* April 6, 1999.

d. *Applicant:* City of Granite Falls, Minnesota.

e. *Name of Project:* Minnesota Falls Hydro Project.

f. *Location:* On the Minnesota River in Chippewa and Yellow Medicine Counties, near Granite Falls, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William P. Levin, City Manager, City of Granite Falls, 885 Prentice Street, Granite Falls, MN 56241–1598, (320) 564–3011 Ext. 5000.

i. *FERC Contact:* Ed Lee (202) 319–2809 or E-mail address at Ed.Lee@FERC.fed.us

j. *Comment Date:* February 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed run-of-river Minnesota Falls Project consists of: (1) an 18-foot-high and 500-foot-long embankment and gravity dam which includes two 13-foot-high concrete spillway sections approximately 307-foot-long, and a 175-foot-long, 4-foot-high earth embankment section on the west side; (2) a 3.4-mile-long reservoir having a surface area of 150-acre and a storage area of 735 acre-feet at normal pool elevation of 883.9 feet M.S.L.; (3) a conduit intake structure located at the east abutment of the spillway; (4) a 9-foot-diameter, 200-foot-long penstock and bifurcation; (5) a powerhouse housing two 580-kW generating units for an installed capacity of 1,160 kW; (6) a proposed substation; and (7) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,600 MWh. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32814 Filed 12–17–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Pre-award Compliance Review Report for all Applicants Requesting Federal Financial Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Pre-award Compliance Review Report for all Applicants Requesting Federal Financial Assistance, EPA ICR No. 0275.07, EPA Form 4700–4, OMB Control No. 2090–0014, Expiration Date March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0275.07. For technical information about the collection contact Ann Goode, at (202) 260–4575.

SUPPLEMENTARY INFORMATION:

Title: Pre-award Compliance Review Report for all Applicants Requesting Federal Financial Assistance, EPA ICR No. 0275.07, EPA Form 4700–4, OMB Control No. 2090–0014, expiration date March 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The information request and gathering is part of the requirement of 40 CFR part 7, ''Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency,'' at 40 CFR 7.80. The regulation implements statutes which prohibit discrimination on the bases of race, color, national origin, sex and handicap. This information is also required, in part, by the Department of Justice regulations, 28 CFR 42.406 and 28 CFR 42.407. The information is collected on a short form from grant and loan applicants as part of the application. The EPA Director of Civil Rights manages the data collection through a regional component or delegated state, both of whom also carry out the data analysis and make the recommendation on the respondent's ability to meet the requirements of the regulation, as well as the respondent's current compliance with the regulation. The information and analysis is of sufficient value for the Director to determine whether the applicant is in compliance with the regulation. Analysis of the data allows EPA to determine:

(1) Whether there appears to be discrimination in the provision of program or activity services between the minority and non-minority population. This allows EPA to determine whether any action is necessary by it before the award of the grant or loan.

(2) Whether the respondent is designing grant or loan financed facilities to be accessible to handicapped individuals or whether a regulatory exemption is applicable. This allows EPA to determine whether design changes are necessary prior to the award of the grant or loan, which can save the respondent a significant amount of money, e.g., ensuring a facility is accessible to the handicapped is much less costly if this requirement is included in the design rather than after construction has begun.

(3) Whether the respondent receives or has applied for financial assistance from other Federal agencies. This information allows EPA to canvass these other agencies to avoid conducting duplicate compliance audits, reviews, or complaint investigations and is a reduction of burden on respondents. Responses to the collection of information are required to obtain a grant or loan and are kept on file by the state distributing the funds.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 28, 1999 (64 FR 22861); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one half (½) hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: State, local, and tribal governments; universities; associations; and non-profit organizations.

Estimated Number of Respondents: 13,100.

Frequency of Response: 1 per 1 to 2 years.

Estimated Total Annual Hour Burden: 6,550 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0275.07 and OMB Control No. 2090–0014 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 14, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–32863 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; RCRA Section 3007 Questionnaire of the Paint Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: RCRA Section 3007 Questionnaire of the Paint Manufacturing Industry. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, email at *Farmer.Sandy@epa.gov,* or download off the Internet at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No.1925.01. For technical information about the questionnaire contact David Carver (703) 308–8603.

SUPPLEMENTARY INFORMATION:

Title: RCRA Section 3007 Questionnaire of the Paint Manufacturing Industry. This is a new collection.

Abstract: The EPA is obligated to make a hazardous waste listing determination on five waste streams generated from the manufacture of paint. These wastestreams include (1) solvent cleaning wastes generated from tank and equipment cleaning operations, (2) water and/or caustic cleaning wastes generated from tank and equipment cleaning operations, (3) wastewater treatment sludge, (4) emission control dust or sludge, and (5) off-specification production wastes.

This Information Collection Request (ICR) specifies information necessary for EPA to analyze how solid and hazardous waste is currently managed in the United States Paint Manufacturing Industry. It proposes the following information collection efforts:

—RCRA Section 3007 questionnaire for up to 250 facilities, including clarifications and updates.

—RCRA Section 3007 residual diagram letter for up to 100 facilities, and

—up to 15 facility site visits.

Information received by the Agency will be used to make a hazardous waste listing determination. If EPA concludes that certain waste streams should be regulated as listed hazardous waste, then these data may potentially be applied to (1) Land Disposal Restrictions (LDR) and Capacity Analysis, (2) a source reduction and/or recycling analysis, (3) a supporting risk assessment, and (4) an economic analysis.

EPA intends to send this *Section 3007 Questionnaire For Paint Manufacturing Residuals* in FY2000 to approximately 250 U.S. paint facilities that manufacture products (i.e., paints, varnishes, lacquers, enamels, and shellacs) under the Standard Industrial Classification Code (SIC) 2851. This questionnaire would collect the following information:

—Corporate/facility data, name, location, EPA hazardous waste identification number (if applicable), and facility contact;

—Residual (as specified in first paragraph) generation and residual management practices; and,

—residual characterization information, residual constituents and test methods employed to test the residuals.

If approved by OMB, facilities will be required to respond within 30 days of receipt of this questionnaire. A facility is only required to respond to this questionnaire if it displays a currently valid OMB control number and expiration date. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15.

In addition to the RCRA 3007 questionnaire, this proposed ICR includes EPA requests for clarifications, questions and updates to the questionnaire and for facility site visits. The clarifications and updates will only be necessary if EPA has follow-up questions regarding submitted requests, or if EPA requires more information to understand residual generation and management practices. The process descriptions will help the Agency better understand the paint manufacturing process. Up to 100 facilities will be required to submit process schematics and detailed descriptions. Finally, EPA proposes to visit up to 15 paint manufacturing facilities to evaluate paint manufacturing residual generation and management processes.

Burden Statement: The average annual burden imposed by the survey and other information collection efforts is approximately 46 hours per respondent (30 hours for the 3007 Questionnaire, 6 hours for the 3007 residual diagram letter, and 10 hours for site visits). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements to train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. This ICR is based on the following information:

Respondents/affected entities: Manufacturers of paint within SIC 2851.

Estimated number of respondents: 365 (250 for 3007 Questionnaire, 100 for 3007 residual process letters, and 15 for site visits).

Frequency of response: The average number of responses for each respondent is 1.

Estimated total annual hour burden: 8,250 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1925.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460; (or E-Mail *Farmer.Sandy@epamail.epa.gov)*

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 15, 1999.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 99–32864 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CAO22–NOA; FRL–6512–6]

Adequacy Status of Submitted PM10 State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found the PM10 attainment submittals of Coachella Valley, Searles Valley (Trona Portion), and San Bernardino County, California, inadequate for transportation conformity purposes. As a result of our finding, the PM10 motor vehicle budgets from the submitted plans cannot be used for conformity determinations.

DATES: This determination was effective November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The finding notification letters are available at website: *http://www.epa.gov/oms/traq,* once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Charnjit Bhullar, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1153 or *Bhullar.charnjit@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. The federal conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will help to reduce air quality violations, achieve expeditious attainment of air quality standards, and will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP submittal is adequate for conformity purposes are specified in 40 CFR 93.118(e)(4) and 58 FR 62194.

On March 2, 1999, the D.C. Circuit Court of Appeals ruled that submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found them adequate through a process providing for public notice and comment. Where EPA finds a SIP submittal inadequate, the budgets cannot be used for conformity determinations.

The new process for determining the adequacy of submitted SIPs is contained in a May 14, 1999, memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' EPA will be revising the conformity rule to codify this guidance. You can obtain this guidance at *http://www.epa.gov/oms/traq,* click on the conformity button and look for ''Adequacy Review of SIP Submissions for Conformity.''

Status of Submitted Budgets

In the Coachella Valley serious PM10 attainment plan and the Searles Valley Moderate PM10 attainment plan, different motor vehicle emission elements were not combined into clearly defined budgets consistent with the federal conformity regulations ((40 CFR 93.118(e)(4) and 58 FR 62194). Thus EPA determined that these plans do not contain emission budgets that are adequate for use in conformity determinations.

Similarly, in the San Bernardino County Moderate PM10 attainment plan, different motor vehicle emission elements in the Moderate PM10 attainment plan were not combined into clearly defined budgets consistent with the federal conformity regulations ((40 CFR 93.118(e)(4) and 58 FR 62194). Further the submittal stated that mobile sources are not a significant contributor to PM10 violations in the nonattainment area. EPA found that PM10 from motor vehicles is a significant contributor to the air quality problem because it is responsible for approximately one-half of the total inventory. Because of these problems, EPA determined that this plan does not contain an emission budget that is adequate for use in conformity determinations.

In letters dated November 23, 1999, from EPA to the California Air Resources Board (CARB), South Coast Air Quality Management District (SCAQMD), and Mojave Desert Air Quality Management District (MDAQMD), Region IX notified the agencies that we had determined that the submittals for these three areas are inadequate for conformity. These agencies have agreed with the definition of the problem and to resolve them by submitting revisions to these PM10 plans early next year.

As stated in the May 14, 1999 guidance, EPA's adequacy review should not be used to prejudge EPA's ultimate approval or disapproval of the submitted SIPs. Approvability of the SIP submittals mentioned in this document will be addressed in a future rulemaking.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–32867 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6511–6]

Consultation on a Longitudinal Cohort Study of Environmental Effects on Mothers and Children

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting: consultation on the feasibility of conducting a longitudinal cohort study of environmental effects on mothers and children.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a one-day consultation cosponsored by the National Institute for Child Health and Human Development (NIH), and the Centers for Disease Control and Prevention (CDC). The meeting is being convened to discuss the feasibility of conducting a longitudinal cohort study

of environmental effects on the health and well-being of mothers and children. Experts on various types of cohort studies will present background on their respective approaches. Presentations will highlight issues that need to be considered in deciding to commence such a study, including specific advantages and disadvantages of each type, and its overall feasibility. Discussants will comment on each approach. Interested parties may register to attend as observers.

DATES: The meeting date is January 12, 2000. The times for the meeting are 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting site is the Hubert Humphrey Building, Stonehenge Room, 6th floor, 200 Independence Avenue, SW., Washington, D.C. The workshop is open to the public, but seating is limited. Those planning to attend must register no later than January 7, 2000.

FOR FURTHER INFORMATION CONTACT: To register as an observer by January 7, 2000, contact Ms. Cyndy Hale, HHS/CDC/NCEH, 4770 Buford Highway, N.W. MS F15, Atlanta, GA 30341–3724; telephone: 770–488–4637; facsimile: 770–488–7361; email: cmh5@cdc.gov. For further information, contact Dr. Carole Kimmel, EPA, National Center for Environmental Assessment (8623D), Washington, D.C. 20460; telephone 202–564–3307; fax: 202–565–0050; E-mail: kimmel.carole@epa.gov.

Dated: December 10, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–32869 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–1]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patent listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent, to Lane Regional Air Pollution Authority, Springfield, Oregon. The patent is:

U.S. Patent No. 5,333,511, entitled ''Portable Controlled Air Sampler,'' issued August 2, 1994.

The invention was announced as being available for licensing in the April 26, 1995 issue of the **Federal Register** (60 FR 20490). Co-inventor Schweiss' interest has been assigned to his employer, the Government of the United States, as represented by the U.S. Environmental Protection Agency. Co-inventor Boyum's interest has been exclusively licensed to the Lane Regional Air Pollution Authority. The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government patent licensing regulations at 37 CFR Part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Regional Administrator for Region X or to a Region X Office Director who has been delegated the authority to issue patent licenses under 35 U.S.C. 207.

DATES: Comments to this notice must be received by EPA at the address listed below by February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 564–5457.

Dated: December 9, 1999.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 99–32865 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6511–7]

Proposed Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Saco Municipal Landfill Superfund Site, Saco, Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs and projected future response costs concerning the Saco Municipal Landfill Superfund Site, Saco, Maine. The settlement requires the settling party, the Joseph M. Herman Shoe Company, Inc., to reimburse the Environmental Protection Agency (the ''Agency'') for response costs incurred and to be incurred at the Saco Municipal Landfill Superfund Site. This amount includes a premium to cover risks associated with the settlement. The settling party will make a payment of $18,000 into the EPA Hazardous Substance Superfund. In addition, the settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted within 30 (thirty) days of publication of this notice.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Saco Municipal Landfill Superfund Site, U.S. EPA Docket No. CERCLA–1–99–0067.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement can be obtained from Ann Gardner, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1895.

Dated: December 7, 1999.

Frank Ciavattieri,

Acting Director, Office of Site Remediation and Restoration .

[FR Doc. 99–32868 Filed 12–17–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Recordkeeping and Confirmation Requirements for Securities Transactions.''

DATES: Comments must be submitted on or before February 18, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Recordkeeping and Confirmation Requirements for Securities Transactions.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 5,094.

Estimated Time per Response: 19.44 hours.

Estimated Total Annual Burden: 99,027 hours.

General Description of Collection: The collection ensures that banks effecting securities transactions maintain adequate records and controls over securities transactions they effect.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 13th day of December, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–32825 Filed 12–17–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The information collection concerns the certification of basements as floodproofed by licensed engineers of architects. This certification is normally performed during or immediately following construction of a house.

The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by December 17, 1999. The approval will authorize FEMA to use the collection through June 30, 2000.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

SUPPLEMENTARY INFORMATION: Under the floodplain management regulations of the National Flood Insurance Program (NFIP) at 44 CFR 60.3, communities that participate in the NFIP must ensure that all new construction in Special Flood Hazard Areas (SFHAs) has the lowest floor elevation to or above the 100-year flood elevation, or Base Flood Elevation (BFE). This requirement is to ensure that the risks to new buildings in SFHAs is sufficiently small that frequent flood losses are reduced and flood insurance can be made available at reasonable rates. However at 44 CFR 60.6 (c), regulations allow communities to apply for an exception to permit the construction of floodproofed residential basements in SFHAs. If the community meets the criteria for an exception as described in 44 CFR 60.6 (d) (2) (i)-(iii), the community requests and receives an exception from FEMA that will allow floodproofed basements to be built in SFHAs in the community. Construction

of a floodproofed basement requires specific design attention to materials, flood loads, and openings where floodwaters may enter a basement. When a community is granted an exception to allow floodproofed basements it agrees that an engineer and architect will properly certify that these basements are in fact floodproofed. In addition, this certificate is also presented to the flood insurance agent by the homeowner so that the homeowner receives the ''discounted'' rate applicable to floodproofed basements. The homeowner, community official and the insurance agent normally retain a copy of this form for recordkeeping only. *Collection of Information*

Title: Residential Basement Floodproofing Certificate.

Type of Information Collection: Reinstatement of a previously approved collection of information.

OMB Number: 3067–0235.

Form Number: FEMA Form 81–78, Residential Basement Floodproofing Certificate.

Abstract. The certificate provides licensed design professionals a standard means of certifying the construction of floodproofed basements below the Base Flood Elevation. This certificate is only used in communities participating in the National Flood Insurance Program who have been granted a ''basement'' exception. The homeowner must pay for the cost of the certification.

Affected Public: This affects individuals who are in communities with ''basement'' exceptions and who build houses with basements in Special Flood Hazard Areas. Communities who have been granted these ''basement'' exceptions also keep copies of the certificate to ensure compliance with local floodplain management ordinances.

Estimated Total Annual Burden Hours. 163 hours (50 respondents x 3.25 hours per response. The respondents are engineers or architects who complete the form as a professional service to a homeowner. There are three inspections during the construction of a flood proof basement. Each inspection is estimated to be 45 minutes, plus one hour for the review of basement design documentation and recordkeeping by insurance agents and community officials.)

Estimated Cost to Respondents. $16,250.00 (The estimated cost of a professional engineering service is $100. That cost multiplied by 3.25—the hour burden per respondent—equals $325 per homeowner to obtain professional engineering services.)

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Submit comments to OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW, Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Paul Tertell, Civil Engineer, Program Policy and Assessment Branch, Mitigation Division, 202–646–3935 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: December 6, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–32854 Filed 12–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0195.

Abstract: The CRS Program establishes a system for FEMA to grade communities' floodplain management activities to determine flood insurance rates for communities. Communities exercising floodplain management activities that exceed Federal minimum standards qualify for lower insurance rates.

The January 1999 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply to the CRS Program for the 1999 through 2001 calendar years. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to the CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining the activities for which they receive credit.

Affected Public: State, Local , or Tribal Government.

Number of Respondents: 940.

Estimated Time per Respondent: Application Communities 29 hours; Maintenance Communities 4 hours.

Estimated Total Annual Burden Hours: 9,260.

Frequency of Response: Annual update.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal

Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: December 8, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–32855 Filed 12–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3153–EM]

Massachusetts; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Massachusetts, (FEMA–3153–EM), dated December 6, 1999, and related determinations.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the Commonwealth of Massachusetts is hereby amended to include Category B (emergency protective measures) under Public Assistance for the following area determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of December 6, 1999:

Worcester County for Category B under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–32853 Filed 12–17–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, Interagency Committee on Dam Safety

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 7(b)(2) of the National Dam Safety Program Act (Pub. L.104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Interagency Committee on Dam Safety.

DATE OF MEETING: January 13, 2000.

PLACE: Federal Emergency Management Agency, 500 C St., S.W., Rm 345, Washington, D.C. 20472.

TIME: 1 p.m.–4 p.m.

PROPOSED AGENDA: Review initiatives for FY2000.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, Telephone (202) 646–2704 or by fax at (202) 646–3990 on or before Jan.10, 2000.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the Interagency Committee on Dam Safety.

Dated: December 7, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–32852 Filed 12–17–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, National Dam Safety Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 8(h) of the National Dam Safety Program Act (Pub. L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Interagency Committee on Dam Safety.

DATE OF MEETING: January 12, 2000.

PLACE: Federal Emergency Management Agency, 500 C Street, SW, Room 345, Washington, DC 20472.

TIME: 8:30 a.m.–11:30 a.m.

PROPOSED AGENDA: Review initiatives for FY2000.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, Telephone (202) 646–2704 or by facsimile at (202) 646–3990 on or before Jan. 10, 2000.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the National Dam Safety Review Board.

Dated: December 7, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–32851 Filed 12–17–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 4 FR 69268, December 10, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, December 14, 1999.

CHANGE IN THE MEETING: The following topics were added to the open portion of the meeting:

• Withdrawal of Proposed Rule—Advance Participations; Sales of Whole Advances.

• Gramm-Leach-Bliley Directorship Amendments.

The Board determined that agency business required the addition of these items on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–33013 Filed 12–16–99; 2:26 pm]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0071]

Hoechst AG, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Elizabeth Jex, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–2574 or 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 7, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted provisionally an agreement containing a proposed consent order from Hoechst AG (''Hoechst'') and Rhone-Poulenc S.A. (''RP'') under which RP would be required: (1) To divest the assets relating to RP's direct thrombin inhibitor drug Revasc; and (2) to divest its interest in Rhodia, its specialty chemicals subsidiary which produces cellulose acetate, to a level of 5% or less and to sequester that interest pending its divestiture, thereby preserving competition in the manufacture, marketing, and sale of cellulose acetate thermoplastics.

The proposed Consent Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

In a proposed merger agreement, Hoechst and RP will combine most of their respective businesses through an exchange offer by RP for all of Hoechst's outstanding shares, with Hoechst shareholders receiving one RP share for each 1.33 outstanding Hoechst shares. Thereafter, the merged entity will be renamed Aventis S.A. (''Aventis''). The proposed complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for: (1) Cellulose acetate; and (2) direct thrombin inhibitors. The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the merger.

Cellulose Acetate

Cellulose acetate is a thermoplastic that is used to produce, among other products, cigarette filters, tool handles, tapes and films. In applications where it is used, there are no cost effective substitutes. U.S. consumers purchase approximate $1 billion worth of cellulose acetate yearly.

The market for cellulose acetate is highly concentrated. Three companies currently produce cellulose acetate in the United States: (1) Eastman Chemical Company (''Eastman''); (2) Primester, a joint venture whose shares are owned 50% by Eastman and 50% by Rhodia (a specialty chemicals company that is itself 67% owned by RP); and (3) Celanese Limited (''Celanese''), until recently a wholly-owned subsidiary of Hoechst. Celanese controls approximately 46% of U.S. production capacity, Eastman owns approximately 44% of U.S. production capacity, and Primester holds the remaining 10%. Eastman and Rhodia are each entitled to one-half of the production of Primester. Rhodia currently sells cellulose acetate only outside the United States; thus Celanese and Eastman are the only companies currently selling cellulose acetate in the United States.

There are significant barriers to entry into the cellulose acetate market. In order to enter the market, a firm must incur substantial sunk costs to build a dedicated production facility. Moreover, reductions in the demand for this material and its limited growth potential create disincentives to new entry.

The merger of RP and Hoechst will increase the likelihood of coordinated interaction in the market for cellulose acetate. The Kuwait Petroleum Company (''PC'') will hold significant interests in Celanese and Aventis after the merger. Because the remaining shareholders of Celanese and Aventis are (and will remain) widely diversified, KPC currently owns a controlling interest in Celanese, and will acquire working control (defined as 10% or more interest in a corporation whose stock is widely held) of Aventis. These shareholdings could permit KPC to

coordinate the activities of Celanese and, through Aventis, Rhodia and Primester after the merger. In addition, Aventis' indirect holding, through Rhodia, of 50% of the Primester joint venture with Easement may facilitate coordination between the KPC-controlled entities and Easement following the merger. For these reasons, the proposed transaction could create conditions that increase the likelihood of collusion in the cellulose acetate market.

On September 15, 1999, the parties entered into undertakings with the Antitrust Directorate of the European Commission (''EC'') to resolve competitive concerns raised by the proposed merger of Hoechst and RP to form Aventis. Among other conditions, the EC undertakings required Hoechst to spin off Celanese and required RP to divest its holding in Rhodia. Pursuant to those undertakings, Hoechst spun off the Celanese division to Hoechst shareholders on October 26, 1999. To date, RP has not divested Rhodia, and the EC undertakings did not require RP to divest Rhodia prior to the formation of Aventis.

The proposed Consent Order is designed to supplement the EC undertakings by preserving interim competition among Celanese, Rhodia and Eastman in the cellulose acetate market in the United States pending Aventis' divestiture of Rhodia. The proposed Consent Order requires the parties to divest their holding of Rhodia to a level of 5% or less of total outstanding shares within three months of the date the consent agreement is accepted by the Commission for public comment. In the case of shares held in escrow as collateral for RP debt obligations, the shares must be divested within six months of the end of the exchange period for those shares. The proposed Consent Order also requires the parties to refrain from participating in the decisions of, seeking to influence the conduct of, or receiving confidential business information concerning Rhodia's cellulose acetate business.

Direct Thrombin Inhibitors

Direct thrombin inhibitors are used in the treatment of various blood clotting diseases. While certain other products may also be used for the treatment of blood clotting diseases, direct thrombin inhibitors are both more effective and safer than any available alternatives. U.S. sales of direct thrombin inhibitors currently total only approximately $15 million, but have the potential to increase significantly in the future.

Hoechst sells the only direct thrombin inhibitor currently on the U.S. market, Refludan. RP is in the final stages of developing its direct thrombin inhibitor, Revasc, which is licensed from Novartis AG (''Novartis'') in 1998. RP plans to submit its New Drug Application for Revasc to the Food and Drug Administration for approval shortly. Available evidence indicates the RP and Hoechst are each other's closest competitors in the direct thrombin inhibitor market. Each party priced its products in relation to those of the other and based its product development strategy on the other's development and position in the market. Other companies currently developing direct thrombin inhibitors are years behind Hoechst and RP.

The planned merger is likely to create anticompetitive effects in the direct thrombin inhibitor market by eliminating the actual, direct, and substantial competition between Hoechst and RP that would otherwise continue to exist. In addition, the proposed transaction reduces potential competition and innovation competition among researchers and developers of direct thrombin inhibitor products by eliminating a significant competitor and increasing the barriers to entry to others by, among other results, combining RP and Hoechst's portfolios of patents and patent applications.

To resolve these anticompetitive concerns, the proposed Consent Order is designed to transfer all of RP's rights in the direct thrombin inhibitor Revasc to Novartis or an independent third party. Novartis (the original licensor) holds a contractual right of prior approval for any transfer of RP's rights in Revasc to any third party. Thus, while other companies have expressed interest in acquiring the rights to Revasc, none may do so without the prior approval of Novartis. The proposed Consent Order requires the parties to return RP's rights in Revasc to Novartis or to sublicense all such rights to another company, subject to Novartis's contractual right of approval. The proposed Consent Order would also require the parties to enter into a short-term service contract with the acquirer of the Revasc rights in order to ensure the continued performance of development work on Revasc. Should RP be unable to divest Revasc during the allotted time period, the proposed Consent Order permits the appointment of a trustee to divest either RP's Revasc assets or the North American rights to Hoechst's own drug, Refludan. Further, in order to prevent any interim harm to assets related to Revasc, the parties have signed a trustee agreement and an Interim Trustee has been approved by the Commission. The proposed Consent Order would provide for the immediate involvement of the Interim Trustee to ensure the continued development and viability of Revasc as an independent competitor to Hoechst's Refludan.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32893 Filed 12–17–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center, publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. HHS Payment Management System Forms PSC–270 (formerly PMS–270) and PSC–272 (formerly PMS–272)—0937–0200 Extension.

The PSC–270 (formerly PMS–270), Request for Advance or Reimbursement, is used to make advances or reimbursement payments to grantees. It serves in place of the SF–270.

Respondents: State and local governments; profit and nonprofit businesses and organizations receiving grants from HHS; *Total Number of Respondents:* 10; *Frequency of Response:* monthly; *Average Burden per Response:* 15 minutes; *Estimated Annual Burden:* 30 hours.

The PSC–272 (formerly PMS–272), Federal Cash Transactions Report, is used to monitor Federal cash advances to grantees and obtain Federal cash disbursement data. It serves in place of the SF–272.

Respondents: State and local governments; profit and nonprofit businesses and institutions receiving grants from HHS; *Total Number of Respondents:* 16,800; *Frequency of Response:* quarterly; *Average Burden per Response:* 4 hours; *Estimated Annual Burden:* 268,800 hours.

Total Burden: 268,830 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–1494. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Norman E. Prince, Jr., Acting PSC Reports Clearance Officer, Room 17A18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: December 13, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–32843 Filed 12–17–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–00–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Implementation of Automated Management Information System (MIS) for Diabetes Control Programs—NEW—National Center for Chronic Disease Prevention and Health Promotion, Division of Diabetes Translation. Diabetes is the seventh leading cause of death in the United States contributing to more than 193,000 deaths each year. An estimated 10.3 million people in the United States have been diagnosed with diabetes and an estimated 5.4 million people have undiagnosed diabetes. The Centers for Disease Control and Prevention's (CDC) Division of Diabetes Translation (DDT) provides funding to health departments of States and territories to develop, implement, and evaluate systems-based Diabetes Control Programs (DCPs), DCPs are population-based, public health programs that design, implement, and evaluate public health prevention and control strategies that improve access to and quality of care for all and reach communities most impacted by the burden of diabetes (e.g., racial/ethnic populations, the elderly, rural dwellers and the economically disadvantaged). Support for these programs is a cornerstone of the DDT's strategy for reducing the burden of diabetes throughout the nation. The Diabetes Control Program is authorized under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. sections 241 and 247b(k)].

Funding recipients are required to submit quarterly status reports to CDC that are used by DDT managers and Program Development Officers (PDOs) to identify training and technical assistance needs; monitor compliance with cooperative agreement requirements; evaluate the progress made in achieving national and program-specific goals; and respond to inquiries regarding program activities and effectiveness. Funding recipients currently have a wide latitude in the content of the information they report with some recipients providing extensive and detailed programmatic progress information and others providing minimal detail regarding DCP operations. Historically, information has been collected and transmitted via hard-copy paper documents. The manual reporting system significantly impacts the DDT's staff ability to accomplish its responsibilities resulting from providing DCP funds, particularly with respect to compiling, summarizing, and reporting aggregate DCP program information.

The proposed change in data collection methodology is being driven by DDT's development of an automated management information system (MIS) to maintain individual DCP information and to normalize the information reported by these programs. The proposed data collection will employ a more formal, systematic method of collecting information that has historically been requested from individual DCPs and will standardize the content of this information. This will facilitate the DDT staff's ability to fulfill its obligations under the cooperative agreements; to monitor, evaluate, and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of the DCP program. It will also support DDT's broader mission of reducing the burden of diabetes by enabling DDT staff to more effectively identify the strengths and weaknesses of individual DCPs and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control diabetes. The total cost to respondents is $6,945.48.

Annualized Burden to Respondents

Form Name: Progress Report.

Number of Respondents: 59.

Number of Responses Per Respondent: 2.

Hours per Response: 2.

Response Burden: 236.

Date: December 13, 1999.

Respondents reside in each of the 50 States, 8 Territories, and the District of Columbia and provide progress reporting on a semi-annual frequency. The annual hour burden is estimated at 236 total hours based on 2 hours to complete a semi-annual report twice per year. Figure was calculated using an average hourly wage of $29.43 per hour.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–32834 Filed 12–17–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2875]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 19, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607 (OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, by December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products. Section 607.20(a) requires certain establishments that engage in the manufacture of blood products to register and to submit a list of blood products in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of blood products to register within 5 days after beginning such operation and to submit a blood product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their blood product listing every June and December. Section 607.22 requires the use of Form FDA 2830, Blood Establishment Registration and Product Listing, for registration and blood product listing. Section 607.25 indicates the information required for establishment registration and blood product listing. Section 607.26 requires for certain changes an amendment to the establishment registration to be made within 5 days of such changes. Section 607.30 requires establishments to update, as needed, their blood product listing information every June and at the annual registration. Section 607.31 requires that additional blood product listing information be provided upon FDA request.

Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's blood supply. Form FDA 2830 is used to collect this information. The likely respondents are blood banks, blood collection facilities, and blood component manufacturing facilities.

FDA estimates the burden of this collection of information based upon the past experience of the Center for Biologics Evaluation and Research, Division of Blood Applications in regulatory blood establishment registration and product listing. Most blood banks are familiar with the regulations and registration requirements to fill out this form.

In the **Federal Register** of September 3, 1999 (64 FR 48408), the agency requested comments on the proposed collection of information. No significant comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Sections	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Response	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, and 607.25	Initial Registration	300	1	300	1	300
607.21, 607.22, 607.25, 607.26, and 607.31	Re-registration	3,300	1	3,300	0.5	1,650
607.21, 607.25, 607.30, and 607.31	Product Listing Update	75	1	75	0.25	19
Total						1,969

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 10, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–32788 Filed 12–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–3089]

Affirmative Agenda for International Activities—Center for Food Safety and Applied Nutrition, Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Center for Food Safety and Applied Nutrition's (CFSAN) Affirmative Agenda for International Activities (International Affirmative Agenda). CFSAN intends to use the general framework of 2000 to 2002 priorities identified in the International Affirmative Agenda during its annual planning process to develop specific international activities for each of the 3 years.

ADDRESSES: The International Affirmative Agenda is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1601, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John W. Jones, Office of Constituent Operations, Center for Food Safety and Applied Nutrition (HFS–550), 200 C St. SW., Washington, DC 20204, 202–205–4311.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 17, 1999 (64 FR 50518), FDA announced the availability of CFSAN's Draft International Affirmative Agenda for 2000 to 2002. FDA also solicited comments on whether to hold a public meeting on the Draft International Affirmative Agenda. Interested persons were given until October 1, 1999, to request a public meeting and until November 1, 1999, to comment. The current notice summarizes the comments received on the draft document and announces the availability of the final version of CFSAN's International Affirmative Agenda. CFSAN intends to use the general framework of 2000 to 2002 priorities identified in the International Affirmative Agenda during the center's annual planning process to develop specific international activities. CFSAN also intends to solicit public input on these planned international activities on an annual basis. Therefore, there will be continuing opportunity for public comment on CFSAN's planned international activities and on the center's overall international priorities.

II. Summary of Comments

FDA received eight letters, each containing one or more comments, on CFSAN's Draft International Affirmative Agenda from a consumer group, a food and drug professional association, and six industry trade associations. FDA received only one request for a public meeting and, based on this, the agency determined that there was not sufficient interest to conduct such a meeting. All of the substantive comments strongly supported the goals of CFSAN's Draft International Affirmative Agenda for 2000 to 2002. The comments articulated some concerns and made a number of suggestions.

A number of comments were related to FDA's public health mandate, the need for FDA to ensure that this mandate is not compromised by trade concerns, and the suggested need for FDA to promote proactively U.S. public health positions in deliberations of international standard setting bodies.

Most, but not all, of these comments suggested that CFSAN only participate in international activities that are consistent with and directly responsive to FDA's mission to protect the public health that is mandated explicitly by statute. Concern was expressed about possible CFSAN activities that appear to promote a particular technology (e.g., biotechnology) or that pertain to equivalence or mutual recognition agreements where, it was asserted, FDA's ability to protect public health would be lowered. There was also concern about any CFSAN activity related to the World Trade Organization (WTO) or North American Free Trade Agreement (NAFTA) that is undertaken explicitly to promote international trade at the expense of public health. The suggestion also was made that CFSAN should oppose actively the establishment of any standard by the Codex Alimentarius Commission (Codex) that does not provide a level of consumer protection equivalent to that which is provided by FDA regulation. One comment, however, suggested that FDA should undertake international activities specifically to support U.S. economic, trade, and market development interests overseas.

Some comments recommended that CFSAN strengthen its participation in Codex to ensure that Codex standards are based on sound scientific principles. These comments emphasized that CFSAN should work closely with the appropriate food industry representatives to develop technically accurate U.S. positions on matters before Codex and to ensure that Codex standards are practicable. The comments also suggested that CFSAN's participation in the Codex development process should be an agency priority and its delegates should be appropriately trained to strengthen the agency's participation.

Likewise, comments suggested that CFSAN take a more proactive and leadership role in developing appropriate work plans for the technical working groups (TWG's) convened under the NAFTA Sanitary and Phytosanitary (SPS) committee, particularly in the area of harmonized regulation procedures for food additives, safety assessments for foods derived from biotechnology, product recall and traceback procedures, and harmonized NAFTA positions on issues before Codex. The agency also was encouraged to be more actively involved in articulating the strength of the U.S. food regulatory system within the WTO's SPS committee.

FDA intends that all of CFSAN's international activities have as their basis maintenance and enhancement of U.S. public health. The draft International Affirmative Agenda states that consistency with FDA's primary public health mission is the first guiding principle of CFSAN's participation in any international activity. In this regard, CFSAN intends to participate in international activities that are intended, directly or indirectly, to enhance the safety, nutritional quality and informative and truthful labeling of foods, and the safety and labeling of cosmetics available to the American consumer, whether the products are produced in or imported into the United States. CFSAN also intends to participate, when practicable, in activities that address other compelling international or domestic public health issues, concerns or priorities identified by the Department of Health and Human Services and other domestic and foreign public health agencies that are important to CFSAN's areas of expertise and authority.

FDA emphasizes that CFSAN's international activities, including participation in committees of the Codex and other standard setting bodies, are aimed primarily at enhancing the agency's ability to protect

U.S. public health. In all international areas where standards are developed or decisions are made that bear on the safety and quality of foods and cosmetics that are produced in or imported into the United States, CFSAN intends to exercise leadership, authority, and influence to ensure that American consumers are protected by such standards and decisions. With regard specifically to bilateral agreements, FDA intends to enhance its ability to ensure that foods and cosmetics imported into the United States are safe through development of formal agreements with foreign governments, such as equivalence agreements, mutual recognition agreements, and memoranda of understanding, that are intended to provide FDA with reasonable assurance that products covered by such agreements consistently meet the U.S. level of public health protection.

CFSAN does not intend to undertake trade-related activities that are intended solely to promote U.S. trade interests or that have the effect of diminishing U.S. public health protection. CFSAN believes that it is appropriate, however, for the center to participate, where practicable, in international activities conducted in response to U.S. obligations under international treaties, trade agreements and other recognized, formal or informal arrangements of the United States. These activities include situations where CFSAN's participation is critical to help the United States resolve international trade disputes or preclude trade interruptions associated with foods and cosmetics for which FDA is the recognized competent U.S. authority.

Other comments were more specific in nature and related to the particular interests of the commenting organization. One comment generally supported CFSAN's proposed international priorities and indicated that the proposed activities, if implemented fully, would enhance FDA's ability to protect public health. The comment stated that the particular organization, which represents Federal, State, and local food and drug officials in the United States and Canada, is well positioned to work cooperatively with FDA and CFSAN, specifically, to implement CFSAN's international activities. In particular, the organization stated that a number of States represented by the association are willing to work collaboratively with FDA through Federal-State partnership agreements which, among other activities, might monitor imported foods to determine compliance with U.S. requirements, assist with trace backs of outbreaks of foodborne illnesses to their source, and improve compliance of imported foods with U.S. labeling requirements. The comment encouraged FDA to pursue additional partnerships with the states to help accomplish the regulatory and enforcement components of the CFSAN's international priorities and to work with the association to facilitate development of such partnerships.

FDA recognizes the continuing importance and advantages of working with state and local authorities on critical food and cosmetic issues, both domestic and international. The agency intends to work collaboratively with state and local regulatory officials through formal Federal-State partnerships and other approaches to leverage expertise and resources. The agency appreciates the organization's willingness to facilitate such collaboration with regard to imported foods and will consider means of enhancing cooperative activities in this area.

Additional comments stressed the importance of FDA finalizing its criteria for determining the equivalence of foreign food regulatory systems so that the United States can deal effectively and efficiently with diverse foreign regulatory systems. The agency was encouraged, for example, to conclude an equivalence agreement with Canadian authorities regarding fish and fishery inspection systems.

FDA intends to finalize its equivalence criteria for foods as soon as possible and to use the final criteria in future equivalence evaluations of foreign food safety regulatory systems.

Two comments strongly supported continuation of cosmetic industry trade association involvement in issuance of export certificates. The comments encouraged FDA to continue to permit cosmetic trade associations to issue export certificates on behalf of members, citing the time efficiency of the industry's program relative to that of any corresponding government certificate issuance activity. Conversely, another comment expressed the view that equivalence agreements, memoranda of understanding, and mutual recognition agreements should be developed between FDA and its trading partners as a means of reducing the need for export certificates.

FDA is currently examining the issue of the agency's involvement in issuance of export certificates for U.S.-produced foods and cosmetics.FDA also intends to finalize its equivalence criteria for foods as soon as possible. The agency will consider the associations' comments during its consideration of the agency's role in issuance of export certificates and whether any future equivalence agreements might reduce foreign requirements for such certificates.

One comment strongly encouraged CFSAN to participate in all relevant international discussions concerning development of harmonized international standards for cosmetics, particularly those discussions bearing on cosmetic trade among the United States, Canada, the European Union, and Japan. Other comments supported CFSAN's continuing involvement in development of mutual recognition agreements pertaining to cosmetics and provision of technical assistance to U.S. trade agencies to prevent or resolve trade disputes involving cosmetics. The comments also supported CFSAN's proposed priority to seek alternatives to animal testing for cosmetics.

CFSAN intends to participate, within resource constraints, in relevant international discussions concerning the safety and labeling of cosmetics to work to harmonize scientific and regulatory approaches, where such harmonization is practicable and maintains or enhances U.S. public health protection.

Two of the food trade associations commented that FDA should strengthen its participation in TWG's convened under NAFTA Sanitary and SPS committee in order to take a more proactive role in developing appropriate work plans for these groups. Specifically, one comment suggested that the TWG's could facilitate issues pertaining to harmonized registration procedures for food additives, safety assessments for foods derived from biotechnology, product recall and trace back procedures, and harmonized NAFTA positions on issues before Codex. This comment noted that FDA had not utilized the TWGs fully and encouraged CFSAN to undertake a greater leadership role in the TWGs. Two of the associations also encouraged FDA to become more actively involved in issues before the WTO's SPS committee, particularly with regard to articulating the strengths of the U.S. food regulatory system.

FDA agrees that the NAFTA TWG's provide an appropriate forum to address food safety, quality and labeling issues that are of interest to Canada, Mexico, and the United States. The agency also agrees that these TWG's can have a positive impact on public health protection and facilitation of the trade of safe food products among the three countries. CFSAN intends to strengthen its participation and leadership in these NAFTA TWG's to the extent practicable. CFSAN also intends to continue its participation in the WTO SPS

committee in order to promote and enhance public health protection in this forum.

Other comments by the food trade associations related to FDA and CFSAN resources needed to accomplish the proposed international priorities, the need for CFSAN to develop a more detailed list of specific activities within each of the broad priority areas in the draft International Affirmative Agenda, and a suggestion that CFSAN's ''first'' priority, both in its domestic and international activities, should be development, maintenance, and dissemination of its science base. Finally, several comments stressed that CFSAN should strive to involve the public fully in its international activities through appropriate notice and comment opportunities and other means.

III. Final CFSAN International Affirmative Agenda for 2000 to 2002

FDA appreciates the comments submitted by the eight organizations and recognizes that all of the comments have merit with regard to CFSAN's current and future international activities. The agency agrees, in principle, with most of the comments and believes that the priorities that CFSAN has articulated in its draft International Affirmative Agenda are compatible with all of the comments.

The international priorities as expressed in the International Affirmative Agenda represent a general framework for the center's international activities for 2000 to 2002. Many specific activities within the broader priority areas are to be planned and accomplished by the center on an annual basis over the next 3 years. Therefore, as these specific, annual international activities are identified and developed, CFSAN will solicit and consider additional public comments, in addition to those submitted on the draft International Affirmative Agenda.

Based on CFSAN's intent to consider comments on its specific international activities on an annual basis during development of its annual international program priorities, the center has elected to finalize CFSAN's International Affirmative Agenda without any changes from the original draft text.

Dated: December 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–32787 Filed 12–15–99; 8:59 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0483]

Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2.'' The guidance document addresses general and specific concerns for gene based detection techniques for human immunodeficiency virus (HIV). The document provides guidance on manufacturing and clinical trial design issues pertaining to the validation of tests based on nucleic acid detection either in the presence or absence of an amplification step.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2.'' The guidance document announced in this notice finalizes the draft guidance entitled ''Guidance for Industry in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1'' published in the **Federal Register** of July 10, 1998 (63 FR 37402). The guidance document clarifies the following issues as a result of public comments submitted on the draft guidance document: (1) The definition of limit of detection and limit of quantitation for a nucleic acid test and laboratory studies recommended for validation of these limits; (2) the analytical sensitivity study recommendations, including the FDA standard for sensitivity of the pool test in the case of nucleic acid testing, for testing pooled plasma; (3) the numbers of sites, specimens, and design of clinical specificity and sensitivity studies recommended for pooled plasma tests; and (4) the clinical studies to validate a claim for viral load tests used in patient management, i.e., prognosis and therapy.

The guidance document outlines some of the major regulatory and scientific issues concerning gene based tests for HIV–1 and HIV–2. These considerations also apply to tests for other transfusion transmitted viruses including hepatitis C virus, hepatitis B virus, and human T-cell Lymphotropic viruses types I and II.

The guidance document represents the agency's current thinking with regard to the manufacture and clinical evaluation of in vitro testing to detect specific nucleic acid sequences of HIV types 1 and 2. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this guidance to be all-inclusive and cautions that not all information may be applicable to all situations. The guidance document is intended to

provide information and does not set forth requirements.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–32789 Filed 12–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1557]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; Form No.: HCFA–1557 (OMB# 0938–0544); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. In order for the State survey agency to report to HCFA its findings on facility compliance with the individual standards on which HCFA determines compliance, the surveyor completes the Survey Report Form. The Survey Worksheet provides space to document the surveyor's notes.; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 30,512; *Total Annual Responses:* 15,526; *Total Annual Hours:* 7,628.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 10, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–32808 Filed 12–17–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3024–NC]

RIN 0938–AH15

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces the requests we have received from entities seeking review of the appropriateness of the Medicare payment amount for new technology intraocular lenses furnished by Ambulatory Surgical Centers (ASCs). Interested parties submitted these requests under the provisions of a final rule published June 16, 1999. This rule detailed the process for requesting a review of these lenses.

DATES: We will consider comments regarding the lenses listed in this notice if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 19, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services (HHS), Attention: HCFA–3024–NC, P.O. Box 8017, Baltimore, MD 21244–8017.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201, or 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of the staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3024–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Claude Mone, (410) 786–5666.

SUPPLEMENTARY INFORMATION: The following application requests have been submitted timely to the Health Care Financing Administration for review:

1. *Manufacturer:* Alcon Laboratories
Model Numbers: Acrysof Models MA30BA and MA60BM
Reason for Requesting Review: The manufacturer states that these lenses provide a reduction in the following:
—The rate of Nd:YAG capsulotomy.
—Posterior capsule opacification (PCO) by reduction in lens epithelial cells (LECs).
2. *Manufacturer:* Allergan
Model Numbers: AMO Silicone Posterior Chamber with UV Absorber Models SI40NB and SI55NB
Reason for Requesting Review: The manufacturer states that all of the following are significantly lower after 2 years of using these lenses:
—Visual acuity loss from best postoperative acuity.
—Incidence of Nd:YAG capsulotomy.
—Posterior capsule opacification (PCO) value.
3. *Manufacturer:* Allergan
Model Number: AMO Array Multifocal Model SA40N
Reason for Requesting Review: The manufacturer states that this lens demonstrates all of the following when compared to a monofocal lens:
—Improved near visual acuity.
—Increased depth of focus.
—Reduced spectacle usage for bilaterally implanted patients.
4. *Manufacturer:* Mentor Corporation (Acquired by CIBA Vision Corporation on July 1, 1999)
Model Numbers: MemoryLens Model Numbers U940A and U940S
Reason for Requesting Review: The manufacturer states that these lenses are the only small incision pre-rolled hydrophilic acrylic lenses in today's global market. The manufacturer did not identify any specific clinical advantages.
5. *Manufacturer:* Pharmacia & Upjohn Company
Model Numbers: CeeOn Heparin Surface Modified (HSM) Models 720C, 722C, 726C, 727C, 730C, 734C, 777C, 809C through 815C, and 820C
Reason for Requesting Review: The manufacturer states that the amount of cellular deposits and the number of giant cells are reduced with their HSM lenses when compared to non-HSM lenses.
6. *Manufacturer:* STAAR Surgical Company
Model Numbers: Elastic Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens with Toric Optic Models AA4203T, AA4203TF, and AA4203TL
Reason for Requesting Review: The manufacturer states that these lenses have the following advantages when compared to spherical (only) lenses:
—Improved uncorrected visual acuity.
—Decreased refractive cylinder resulting from corneal astigmatism.

Authority: Sections 1832 (a)(2)(F)(i) and 1833(i)(2)(A) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A))

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 13, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–32791 Filed 12–17–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Cortina Integrated Waste Management Project, Colusa County, CA

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to submit a Draft Environmental Impact Statement (DEIS) for a proposed lease of approximately 443 acres held in trust by the federal government for the Cortina Band of Wintun Indians in Colusa County, California, to the Environmental Protection Agency for public review and comment. The purpose of the proposed action is to allow Cortina Integrated Waste Management, Inc., to develop and operate needed waste treatment facilities referred to as the Cortina Integrated Waste Management Project. The BIA prepared the DEIS in cooperation with the Cortina Band of Wintun Indians and the Band's environmental consultants. A description of the proposed project location and of the environmental issues addressed in the DEIS follow as supplementary information. This notice also announces a public hearing to receive public comments on the DEIS.

DATES: Written comments must arrive by February 15, 2000. The Public hearing will be held on February 2, 2000, from 6:30 p.m. to 9:00 p.m.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Ronald M. Jaeger, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California, 95825–1846. You may also comment via the Internet to billallan@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name, return address and the caption, ''DEIS Comments, Cortina Integrated Waste Management Project, Cortina Indian Rancheria of Wintun Indians, Colusa County, California,'' on the first page of your written comments or Internet message. If you do not receive confirmation from the system that your Internet message was received, contact us directly at (916) 978–6043.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

To obtain a copy of the DEIS, please write or call William Allan, Environmental Protection Specialist, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825-1846, telephone (916) 978–6043.

The public hearing will be held at Colusa Industrial Properties, 100 Sunrise Boulevard, Colusa, California. This hearing will be co-hosted by the BIA and the Cortina Band of Wintun Indians.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: The proposed action is the approval of a 25 year lease of 443 acres of the 640 acre Cortina Rancheria to Cortina Integrated Waste Management, Inc., for the development and operation of a landfill, a materials recovery facility, a composting facility, a bio-remediation facility, plus ancillary facilities. These would occupy approximately 213 acres of the lease area. The proposed project site is located in the rugged eastern foothills of the Coast Ranges, just above the west side of the Sacramento Valley in northern California. It is

approximately 50 miles northwest of Sacramento, in the southwest corner of Colusa County.

The landfill is proposed as a Class III solid waste facility, which may only accept non-hazardous, municipal solid waste. The disposal of hazardous waste in a Class III landfill is prohibited. The landfill would be operated as a balefill, designed to consist of four separate phases that are operated sequentially. The active portion of the landfill would typically be less than one quarter acre. The containment system for the landfill would well exceed federal, California and Wintun Environmental Protection Agency regulatory requirements for Class III landfills.

The materials recovery facility proposed as part of the project would separate and recover recyclable materials, thus producing revenue for the Band and reducing the amount of material deposited in the landfill. It would be an enclosed structure on a concrete/asphalt pad.

The proposed composting facility would accelerate natural decomposition of organic waste by bacteria. Its operations would occur within a lined portion of the landfill, utilizing the ''turned windrow'' method.

The proposed bio-remediation facility for processing petroleum contaminated soils would also be operated within a lined portion of the landfill area. The process consists of adding oxygen, nutrients, and microorganizms to the contaminated soils to enhance the breakdown of the petroleum hydrocarbons.

Alternatives to the proposed project that are considered in the DEIS include the no action alternative and two reduced project alternatives. The environmental issues addressed in the DEIS include land and water resources, air quality, living resources, cultural and socioeconomic resources, land use, traffic, noise, public safety and health, and visual resources.

This notice is published in accordance with Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of the authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 10, 1999.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 99–32926 Filed 12–17–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Notice of Cancellation of December Meeting and Notice of Meetings for Calendar Year 2000

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, December 21, 1999 at Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California is canceled.

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2000 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 18, San Francisco, CA
Saturday, January 29, Point Reyes, CA
Tuesday, February 15, San Francisco, CA
Tuesday, March 21, San Francisco, CA
Tuesday, April 18, San Francisco, CA
Saturday, May 6, Point Reyes, CA
Tuesday, May 16, San Francisco, CA
Tuesday, June 20, San Francisco, CA
Tuesday, July 18, San Francisco, CA
Tuesday, August 15, San Francisco, CA
Tuesday, September 19, San Francisco, CA
Tuesday, October 17, San Francisco, CA
Saturday, October 21, Point Reyes, CA
Tuesday, November 21, San Francisco, CA
Tuesday, December 19, San Francisco, CA

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Carlota del Portillo
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Mel Lane

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, January 29, Saturday, May 6, and Saturday, October 21 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated agenda items at meetings during calendar year 2000 will include:

- Update on Oakwood Valley Eucalyptus Removal Project
- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Staff Report on Presidio Vegetation Management Plan
- Public Comment and Commission Action on CalTrans Vista Point Project
- Updates on Comprehensive Marin Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5 Year Strategic Plan
- Report and Commission approval of the National Historic Nomination for Sutro District
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Status Reports on Presidio Mott Visitor Center
- Reports on GGNRA education programs
- Update Design Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan
- Reports on Plans for Fort Mason Center Pier One
- Report and approval on Bank Swallows Project and updates on other Natural Resource Projects

- Reports on park equestrian permits
- GGNPA annual briefing
- Alcatraz Historic Preservation and Safety Construction Project DEIS Public Comment and Commission Action
- Marin Boundary Expansion Public Comment and Commission Action
- San Mateo issues: updates on park land acquisition efforts
- Update reports on ''Park Partner'' programs
- Updates on Fort Mason Reuse projects
- Updates on Presidio Trails Master Plan and Environmental Assessment
- Update on land acquisition program
- Updates on issues concerning areas managed by the Presidio Trust, and
- updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report, a Presidio General Manager's Report, and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 10, 1999.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 99–32837 Filed 12–17–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2037–99]

Extension of Work Authorization for Certain Haitians Previously Granted Deferred Enforced Departure (DED) until September 30, 2000

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: From December 23, 1997, until December 22, 1998, the Immigration and Naturalization Service (Service) issued Employment Authorization Documents (EAD) to Haitian nationals on the basis of Deferred Enforced Departure (DED). By notice in the **Federal Register** on December 14, 1998, the Service automatically extended the validity of those EADs for a period of 1 year, ending December 22, 1999. By this notice, the Service is granting a further extension of these EADs until September 30, 2000. This action will provide Haitian nationals who obtained DED-based EADs an additional 9 months of employment authorization while they apply for adjustment of status pursuant to section 902 of the Haitian Refugee Immigration Fairness Act of 1998, and obtain a new EAD in connection with their application for adjustment of status. The automatic extension applies to EADs bearing the notation:

- ''A–11'' on the face of the card under ''Category'' for EADs issued on a Form I–766; or
- ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' for EADs issued on a Form I–688B.

DATES: This notice is effective December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Adjudications Officer, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What is the purpose of extending employment authorization to certain Haitian nationals?

On December 23, 1997, the President ordered the Attorney General to grant DED for 1 year to certain Haitian nationals. On October 21, 1998, the President signed into law the Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277. Title IX of Public Law 105–277 contains the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). Specifically, section 902 of HRIFA allows certain Haitian nationals to adjust status to that of a lawful permanent resident. The Attorney General issued the HRIFA regulations in an interim rule published in the **Federal Register** at 64 FR 25756 on May 12, 1999. That rule allows qualified aliens to submit applications for adjustment of status under the HRIFA during the period from June 11, 1999, until March 31, 2000.

The employment authorization for Haitian nationals covered by DED was originally scheduled to expire in December 1998. In order to allow these aliens to maintain their employment authorization until they could obtain a new EAD in connection of their DED-related EADs until December 22, 1999, through a notice in the **Federal Register** (63 FR 68799 (December 14, 1998)). At the time this notice was published, the Service anticipated that the HRIFA regulations would have been issued earlier than May 12, 1999, which is when they were actually issued. Because of this unanticipated delay, affected aliens had less time to apply for adjustment of status under HRIFA and receive an EAD based upon this application before the expiration of their DED-related EAD. Therefore, the Service has decided to extend the validity of the DED-related EADs for a second time, until September 30, 2000.

This automatic extension of DED-related EADs will expire on September 30, 2000. Affected Haitian nationals who will need work authorization after September 30, 2000, should file an application for adjustment of status pursuant to HRIFA and related EAD applications as soon as possible to ensure continuous employment authorization if they have not already done so. In any event, all applications for adjustment of status under the HRIFA must be filed by March 31, 2000.

Can an applicant who was eligible for DED under the December 23, 1997, President order still apply for employment authorization if he or she has not already done so?

No. The grant of DED for certain Haitian nationals expired on December 22, 1998. Therefore, the Service cannot accept new applications for DED-related employment authorization under that program. However, Haitian nationals without employment authorization who qualify for adjustment of status under the HRIFA may apply immediately for adjustment of status under HRIFA, and they can also apply for related employment authorization in connection with a HRIFA application.

Who is eligible to receive an automatic extension of employment authorization?

To be eligible for an automatic extension of employment authorization, an individual must be a national of Haiti who previously applied for and was issued an EAD under the December 23, 1997, Presidential order mandating DED for Haitians.

This second automatic extension is limited to EADs bearing the notation:

• ''A–11'' on the face of the card under ''Category'' for EADs issued on Form I–766; or,

• ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B.

Does a qualified individual have to apply to the Service for an extension of their DED-related EAD?

No, the extension is automatic. However as discussed below, qualified individuals are encouraged to retain a copy of this **Federal Register** notice for purposes of the employment verification process.

What should an individual do if they have lost their DED-related EAD?

An individual who has lost his or her DED-related EAD has two options:

(1) The individual can submit an Application for Employment Authorization, Form I–765, with $100 fee or fee waiver request, to the Texas Service Center to obtain a replacement card. Applications for replacement cards should be mailed to the following address: United States Immigration and Naturalization Service, Texas Service Center, P.O. Box 152122, Department A, Irving, Texas 75015–2122; or,

(2) If eligible, the individual can submit an application for adjustment of status under the HRIFA and the related employment authorization with the appropriate fee to the Nebraska Service Center. Both the application for adjustment of status under the HRIFA and the application for employment authorization should be addressed as follows: United States Immigration and Naturalization Service, Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501–7245. Applicants for adjustment of status under the HRIFA must file their applications for adjustment on or before March 31, 2000.

The DED-related replacement EADs are valid until September 30, 2000. The EADs issued on the basis of HRIFA-related applications for adjustment of status will be valid for 1 year from the date of approval.

How can eligible Haitian nationals obtain HRIFA-related employment authorization?

On May 12, 1999, the Attorney General issued an interim rule at 64 FR 25756, implementing section 902 of the HRIFA by establishing procedures for certain nationals of Haiti who have been residing in the United States to apply for lawful permanent resident status in this country. The interim rule includes instructions for obtaining employment authorization based upon a pending HRIFA-based application for adjustment of status. Qualified Haitian nationals filing as principal applicants must file for adjustment of status on or before March 31, 2000.

An applicant for adjustment of status under the HRIFA who wishes to obtain initial employment authorization, or continued employment authorization when his or her prior authorization expires during the pendency of the adjustment of status application, may file an Application for Employment Authorization (Form I–765) with the Service.

When do beneficiaries of HRIFA have to file an application for new work authorization?

Qualified Haitian nationals filing as principal applicants must file an application for adjustment of status under the HRIFA on or before March 31, 2000. Therefore, applicants are encouraged to submit their complete HRIFA-related adjustment applications as quickly as possible. While there is a statutory deadline for HRIFA application for adjustment of status for principal applicants, there is no deadline to file for HRIFA-related employment authorization, or for dependents to file for adjustment. However, the adjudication of an employment authorization application and issuance of an EAD may take up to 180 days not including the round-trip mailing time. Since the automatic extension of the DED-related EADs will expire on September 30, 2000, Haitian DED grantees who apply for adjustment of status under the HRIFA are encouraged to submit their complete HRIFA-related adjustment applications and their work authorization applications as soon as possible, so that they may receive their HRIFA-based EADs before their DED-related EADs expire.

What documents can a qualified individual show to his or her employer as proof of employment authorization and identity when completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or reverification, qualified Haitian nationals who have received an extension of employment authorization by virtue of this **Federal Register** notice can present to their employer their DED-related EAD as proof of valid employment authorization and identity until September 30, 2000. To minimize confusion over this extension at the time of hire or re-verification, qualified Haitian nationals may also present to their employer a copy of this **Federal Register** notice regarding the extension of employment authorization to September 30, 2000. In the alternative to presenting a DED-related EAD, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How can employers determine which EADs that have been automatically extended through September 30, 2000, are acceptable for completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until September 30, 2000, employers of DED Haitian nationals whose employment authorization has been automatically extended by this notice must accept an EAD that bears the notation:

• ''A–11'' on the face of the card under ''Category'' for EADs issued on Form I–766; or,

• ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B.

New EADs or extension stickers showing the automatic September 30, 2000, expiration date will not be issued. Employers should not request proof of Haitian citizenship. Employers presented with an EAD that has been extended by this **Federal Register** notice and that appears to be genuine and to relate to the employee should accept the document as a valid List A document and should not ask for additional I–9 documentation. This action by the Service through this notice in the **Federal Register** does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. Employers may call the Service's Office of Business Liaison employer hotline at 1–800–357–2099 to speak to a Service representative about this Notice. Employers can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688 about the automatic extension.

How should employers fill-out the Form I–9 if an employee presents, at the time of hire or re-verification, an EAD that has been extended by this Federal Register notice?

To complete the Form I–9 at the time of hire or re-verification for an employee who presents an EAD card that has been automatically extended by this **Federal Register** notice, the employer should include or add the following information under Section 2 (in List A) or Section 3 of the Form I–9, as appropriate:

(1) Record the document identification information of the EAD; and

(2) Record September 30, 2000, for the document expiration date.

If the employee presents a copy of this **Federal Register** notice, the employer should note on Form I–9 his or her review of this document.

Dated: December 16, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–33011 Filed 12–16–99; 12:30 pm]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–161]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Esarati International Corporation, of 10 South LaSalle Street, Suite 3500, Chicago, Illinois 60606, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,772,912, entitled ''Environmentally Friendly Anti-Icing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, Telephone (650) 604–5104.

Dated: December 13, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–32805 Filed 12–17–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–160]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that ICEM–CFD Engineering, of 2855 Telegraph Avenue, Suite 510, Berkeley, California 94705, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. ARC–14275–1, entitled ''Triangle Geometry Processing for Surface Modeling and Cartesian Grid Generation (CART3D),'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, Telephone (650) 604–5104.

Dated: December 13, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–32804 Filed 12–17–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection was published for a sixty day comments period on September 27, 1999 and for a thirty days comments period on November 26, 1999. No comments were received. Shortly after publication of the thirty day notice, revisions to the information collection occurred. These revisions substantially lessened the amount of burden.

DATES: Comments will be accepted until January 19, 2000.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0135.

Form Number: N/A.

Type of Review: Reinstatement, with change, or a previously approved collection for which approval has expired.

Title: National Credit Union Administration Agreement for Electronic Funds Transfer Payments.

Description: NCUA needs this information to comply with the Debt Collection Improvement Act which has a provision concerning the use of EFT payments.

Respondents: Credit Unions.

Estimated No. of Respondents/Recordkeepers: 250.

Estimated Burden Hours Per Response: ¼ hour.

Frequency of Response: One-time and on occasion.

Estimated Total Annual Burden Hours: 62.5.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 10, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–32856 Filed 12–17–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, Folk & Traditional Arts section (Infrastructure Initiative category), to the National Council on the Arts will be held from January 11–12, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:00 a.m. to 10:00 a.m. on January 12th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on January 11th, and from 10:00 a.m. to 1:00 p.m. on January 12th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202–682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: December 14, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–32925 Filed 12–17–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1998 and ending September 30, 1999.

Name and Title

Richard L. Ahearn—Regional Director, Region 9

Frank V. Battle—Deputy Director of Administration

Kenneth A. Bolles—Chief Counsel to Board Member

Mary Joyce Carlson—Deputy General Counsel

Harold J. Datz—Chief Counsel to Board Member

Robert A. Giannasi—Chief Administrative Law Judge

Wayne R. Gold—Director, Office of Representation Appeals

John E. Higgins—Solicitor

Peter B. Hoffman—Regional Director, Region 34

Gloria Joseph—Director of Administration

Barry J. Kearney—Associate General Counsel, Advice

Linda R. Sher—Associate General Counsel, Enforcement Litigation

Richard A. Siegel—Associate General Counsel, Operations-Management

Elinor H. Stillman—Chief Counsel to Board Member

John J. Toner—Executive Secretary

Dennis P. Walsh—Chief Counsel to Board Member

Jeffrey D. Wedekind—Acting Chief Counsel to the Chairman

Dated: Washington, D.C., December 14, 1999.

By Direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 99–32875 Filed 12–17–99; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date/Time: January 19, 20, and 21, 2000, 8 am–5:30 pm.

Place: Rooms 360, 530, and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence Seiford, Program Director, Operations Research and Production Systems Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–32850 Filed 12–17–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date/Time: Wednesday, January 26, 2000, 5 p.m. to 9 p.m.; Thursday, January 27, 2000, 8 p.m. to 5 p.m.; Friday, January 28, 2000, 8 p.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., 3rd Floor, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Hyman H. Field, Senior Advisor for Public Understanding of Research, National Science Foundation, 4201 Wilson Blvd., Room 805, Arlington, VA 22230. Telephone: (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Informal Science Education Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 13, 1999.

Karen J. York,

Committee Manager Officer.

[FR Doc. 99–32849 Filed 12–17–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (1208).

Date/Time: February 7–9, 2000, 8 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Winston Roberts, Program Director for Nuclear Theory, Division of Physics, Rm 1015, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1805.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Nuclear Theory Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 13, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–32847 Filed 12–17–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (1208).

Date/Time: January 27–29, 2000 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Division of Physics, Rm 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1891.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Nuclear Physics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 13, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–32846 Filed 12–17–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (1214).

Date and Time: January 10–12, 2000; 8 a.m. to 5 p.m.

Place: Rooms 320 and 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Gordon Uno and Joan Prival, National Science Foundation, 4201 Wilson Boulevard, Room 835, Arlington, VA 22230. Telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic Social Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individual associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 13, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–32848 Filed 12–17–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–28, issued to Vermont Yankee Nuclear Power Corporation, (the licensee), for operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee), located in Windham County, Vermont.

Environmental Assessment

Identification of the Proposed Action

The proposed action would modify the spent fuel pool (SFP) by installation of additional rack modules. The additional rack modules will increase the Vermont Yankee SFP capacity from 2870 to 3353 fuel assemblies.

The proposed action is in accordance with the licensee's application for amendment dated September 4, 1998, as supplemented on February 8, April 16, August 26, September 16, and November 17, 1999.

The Need for the Proposed Action

Vermont Yankee currently has full-core discharge reserve storage capability in the SFP through the Spring 2001 refueling outage. Since there are no immediate options for the shipment of spent fuel to a permanent repository, the proposed action is required to maintain full-core reserve discharge capability to the SFP through the Fall 2008 refueling outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes there are no significant environmental impacts. The factors considered in this determination are discussed below.

Radioactive Waste Treatment

Vermont Yankee uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are evaluated in the Final Environmental Statement (FES) dated July 1972. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released to the Atmosphere

The storage of additional spent fuel assemblies in the SFP is not expected to affect the releases of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air. Since the frequency of refuelings (and therefore the number of freshly offloaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amount of radioactive material released to the atmosphere as a result of the increased SFP fuel storage capacity.

The storage of additional fuel assemblies in the SFP will not increase the SFP bulk water temperature beyond the existing design temperature. Therefore, radioactive material airborne release rates due to evaporation from the SFP are not expected to increase.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP Purification System. The licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the storage of additional spent fuel assemblies in the SFP. In order to maintain the SFP water as clean as possible, and thereby minimize the generation of spent resins, the licensee will vacuum the floor of the SFP to remove any radioactive crud and other debris before the new fuel rack modules are installed. The staff does not expect that the additional fuel storage made available by the increased storage capacity will result in a significant change in the generation of solid radioactive waste.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the modifications. The SFP ion exchanger resins remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water which is released is processed by the radwaste system. As stated above, the licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the storage of additional spent fuel assemblies in the SFP. The amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Radiological Impact Assessment

The staff has reviewed the licensee's plan for the modification of Vermont Yankee spent fuel racks with respect to occupational radiation exposure. For this modification the licensee plans to add three new fuel rack modules to the SFP. A number of facilities have performed similar operations in the past. On the basis of the lessons learned from these operations, the licensee estimates that the proposed fuel rack installation can be performed for between 1.6 and 3 person-rem.

All of the operations involved in the fuel rack installation will utilize detailed procedures prepared with full consideration of ALARA (as low as reasonably achievable) principles. The Radiation Protection Department will prepare Radiation Work Permits (RWPs) for the various jobs associated with the SFP rack installation operation. These RWPs will instruct the project personnel in the areas of protective clothing, general dose rates, contamination levels (including potential exposure to hot particles), and dosimetry requirements. Each member of the project team will attend an ALARA Pre-Plan meeting and each team member will be required to attend daily pre-job briefings on the scope of the work to be preformed. Personnel will wear protective clothing and will be required to wear personnel monitoring equipment including alarming dosimeters.

Since this license amendment does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interferences which may impede the installation of the new spent fuel racks, the licensee will equip each diver with radiation detectors with remote, above surface, readouts which will be continuously monitored by Radiation Protection personnel. The licensee will conduct radiation surveys of the diving area prior to each diving operation and following the movement of any irradiated hardware. In order to minimize diver dose, the licensee will use visual barriers (such as streamers fastened to rope, nets, or enclosure) as much as practical. The licensee will monitor and control personnel traffic and equipment movement in the SFP area to minimize contamination and to ensure that exposure is maintained ALARA.

On the basis of our review of the Vermont Yankee proposal, the staff concludes that the Vermont Yankee SFP rack modification can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The projected dose for the project of 1.6 to 3 person-rem is in the range of doses for similar SFP modifications at other plants and is a small fraction of the annual collective dose accrued at Vermont Yankee.

Accident Considerations

On April 25, 1986, Vermont Yankee submitted an amendment request to increase the SFP capacity from 2000 to 2870. The staff approved that amendment request on May 20, 1988. The staff's safety evaluation supporting the issuance of that amendment concluded that the licensee's fuel handling accident dose analysis was acceptable. For this amendment request (3353 storage locations), the licensee concluded that analysis was still valid because no parameters of the analysis were affected by the increase in storage capacity. After reviewing the licensee's current submittal and the 1988 safety evaluation, the staff agrees with the licensee's conclusion. Because the proposed SFP modification at Vermont Yankee will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident, it will not result in an increase in the doses from a postulated fuel handling accident.

Conclusion

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental

impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to increasing the spent fuel storage capacity at Vermont Yankee, the licensee considered shipment to another reactor site or away-from-reactor storage facility, e.g. shipment of spent fuel to a Federal fuel storage or disposal facility. This alternative was determined not to be feasible due to the unavailability of an offsite storage facility.

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on December 13, 1999, the staff consulted with the Vermont State Official, William Sherman, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 4, 1998, as supplemented on February 8, April 16, August 26, September 16, and November 17, 1999.

Dated at Rockville, Maryland, this 14th day of December 1999.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32881 Filed 12–17–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Consideration of Amendment Request for Decommissioning the Fort McClellan Facility in Fort McClellan, Alabama, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Nuclear Materials License No. 01–02861–05, issued to the Department of the Army's Chemical School, to authorize decommissioning of a radioactive waste burial mound located at the Pelham Range at Fort McClellan, Alabama.

The licensee has been decommissioning the Chemical School radiological training facilities at Fort McClellan in accordance with the conditions discussed in License No. 01–02861–05. On September 9, 1999, the licensee submitted a decommissioning plan to NRC for review that summarized the activities that will be undertaken to remediate the radioactive waste burial mound located at the Pelham Range. The radioactive contamination consists of soil contaminated with byproduct material resulting from licensed activities that occurred from the late 1950s until the mid 1970s.

The NRC will require the licensee to remediate the Fort McClellan facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in an Environmental Assessment. Approval of the decommissioning plan will be documented in an amendment to License No. 01–02861–05.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practices for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(a). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g); and

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e) each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Chemical School, ATTN: ATSN–CM, 401 Engineer Loop, Ft. Leonard Wood, MO 65473–8928, Attention: Commandant; and

2. The NRC staff, by delivery to the executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the site decommissioning plan will be available for review on the NRC's Public Electronic Reading Room.

Dated at Atlanta, Georgia, this 7th day of December, 1999.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety.

[FR Doc. 99–32880 Filed 12–17–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42223; File No. SR–Amex–99–40; SR–PCX–99–41; SR–CBOE–99–59]

Self-Regulatory Organizations; American Stock Exchange LLC; Pacific Exchange, Inc.; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options

December 10, 1999.

I. Introduction

On October 5, 1999, October 13, 1999, and November 4, 1999, the American Stock Exchange LLC (''Amex''), Pacific Exchange, Inc. (''PCX''), and the Chicago Board Options Exchange, Inc. (''CBOE'') (collectively, the ''Exchanges''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder, [2] proposed rule changes to make permanent their pilot programs to eliminate position and exercise limits for FLEX Equity options.

The proposed rule changes were published for comment in the **Federal Register** on November 11, 1999. [3] No comments were received on the proposals. This order approves the proposals on an accelerated basis.

II. Background and Description

On February 14, 1996 and June 19, 1996, the Commission approved the Exchanges' proposals to list and trade FLEX Equity options on specified equity securities. [4] According to the Exchanges, those proposals were designed to provide investors with the ability, within specified limits, to designate certain terms of the options. In support of their proposals, the Exchanges stated that in recent years, an over-the-counter (''OTC'') market in customized equity options had developed which permitted participants to designate the basic terms of the options including size, term to expiration, exercise style, exercise price, and exercise settlement value. According to the Exchanges, participants in this OTC market were typically institutional investors, who bought and sold options in large-size transactions through a relatively small number of securities dealers. To compete with this growing OTC market in customized equity options, the Exchanges proposed to expand their FLEX options rules [5] to permit the introduction of trading in FLEX options on specified equity securities that satisfied the Exchanges' listing standards for equity options. [6] The Exchanges' proposals allowed FLEX Equity option market participation to designate the following contract terms: (1) certain exercise prices; [7] (2) exercise style (*i.e.,* American, European, or capped); [8] expiration date; [9] and (4) option type (*i.e.,* put call, or spread). In addition, the Exchanges set position and exercise limits for FLEX Equity options at three times the position limits for the corresponding Non-FLEX Equity options on the same underlying security. [10]

Thereafter, on September 9, 1997, the Commission approved proposed rule change from the Exchanges eliminating position and exercise limits for FLEX Equity options on a two-year pilot basis. [11] In addition to eliminating position and exercise limits, the pilot program required that a member or member organization (other than a Specialist or Registered Options Trader) report to the Exchange information for each account that maintains a position on the same side of the market in excess of three times the position limit level established pursuant to the applicable exchange rule for Non-Flex Equity options of the same class. The report included information regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. [12]

Furthermore, the Commission, in its order approving the pilot program, required each of the Exchanges to submit a report containing a description of: (i) the types of strategies used by FLEX Equity options market participants and whether FLEX Equity options are being used in lieu of existing standardized equity options; (ii) the type of market participants using FLEX Equity option both before and during the pilot program, including how the utilization of FLEX Equity options has changed; (iii) the average size of FLEX Equity option contracts both before and during the pilot program, the size of the largest FLEX Equity option contract on any given day both before and during the pilot program, and the size of the largest FLEX Equity option held by any single customer/member both before and during the pilot program; and (iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42126 (November 10, 1999), 64 FR 63064 (November 18, 1999).

[4] *See* Securities Exchange Act Release Nos. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (File Nos. SR–CBOE–95–43 and SR–PSE–95–24), and 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996) (File No. SR–Amex–95–57).

[5] *See e.g.,* Amex Rules 900G through 909G. At the time of their FLEX Equity option proposals, the Amex and the CBOE had already secured Commission approval to list and trade FLEX options on several broad-based market indexes composed of equity securities (''FLEX Index options''). *See, e.g.,* Securities Exchange Act Release Nos. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993) (order approving the trading of FLEX Index options on the Major Market, Institutional, and S&P MidCap Indexes) (File No. SR–Amex–93–05), and 34052 (May 12, 1994), 59 FR 25972 (May 18, 1994) (order approving the trading of FLEX Index options on the Nasdaq 100 Index) (File No. SR–CBOE–93–46).

[6] *See e.g.,* Amex Rule 915, containing initial listing standards for a security to be eligible for options trading. In addition, the Exchanges may trade FLEX options on any options-eligible security regardless of whether standardized Non-FLEX options overlie that security and regardless of whether such Non-FLEX options trade on the Exchanges.

[7] *See* Securities Exchange Act Release No. 37726 (September 25, 1996), 61 FR 51474 (October 2, 1996), regarding restrictions on the available exercise prices for FLEX Equity call options.

[8] An American-style option is one that may be exercised at any time on or before the expiration date. A European-style option is one that may be exercised only during a limited period of time prior to expiration of the option. A capped-style option is one that is exercised automatically prior to expiration when the cap price is less than or equal to the closing price of the underlying security for calls, or when the cap price is greater than or equal to the closing price of the underlying security for puts.

[9] The expiration date of a FLEX Equity option cannot, however, fall on a day that is on, or within two business days of, the expiration date of a Non-FLEX Equity option.

[10] At that time, position and exercise limits for FLEX Equity options were set as follows as compared to then-existing limits for Non-FLEX Equity options on the same underlying security.

Non-FLEX Equity position limit	*FLEX Equity position limit*
4,500 contracts	13,500 contracts
7,500 contracts	22,500 contracts
10,500 contracts	31,500 contracts
20,000 contracts	60,000 contracts
25,000 contracts	75,000 contracts

Aggregation of positions or exercises in FLEX Equity options with positions or exercises in Non-FLEX Equity options was not required for purposes of the limits.

[11] *See* Securities Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997) (approving File Nos. SR–Amex–96–19; SR–CBOE–96–79; SR–PCX–97–09).

[12] The Exchanges also required that an updated report be filed when a change in the options position occurred or when a significant change in the hedge of that position occurred. *See* Securities Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

position limit. Each of the Exchanges has filed their reports, which will be discussed below.

On September 9, 1999, the Commission approved an extension of the pilot programs for another three months.[13] The current pilot programs expired on December 9, 1999. Accordingly, the Exchanges request approval of their programs on a permanent basis. All of the terms and conditions applicable under the current pilots, including the reporting requirements, will remain in effect after the proposals are approved permanently.[14]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[15] Specifically, the Commission believes that the rule proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule changes are consistent with Section 11A of the Act in that the permanent elimination of position and exercise limits for FLEX Equity options allows the Exchanges to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets. The attributes of the Exchanges' options markets versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC for all contracts traded on the Exchanges.

The Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits. Given that the current pilot programs have run for the past two years without incident, the Commission believes that it is appropriate to approve the pilots on a permanent basis. First, the FLEX Equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX Equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, all of the Exchanges' other current rules and provisions governing FLEX Equity options remain applicable.[16] Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed elimination of position and exercise limits for FLEX options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Fifth, the enhanced reporting requirements should help the Exchanges to monitor accounts under risk and to take any appropriate action. Finally, the Exchanges' surveillance programs will be applicable to the trading of FLEX Equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchanges have adopted important safeguards that will allow them to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. The Exchange require each member or member organization (other than a Specialist, a Registered Options Trader, a Market Maker, or a Designated Primary Market Maker) that maintains a position on the same-side of the market in excess of three times the position limit level established pursuant to the applicable exchange rule for Non-FLEX Equity options of the same class to report information to the exchange regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. By monitoring accounts in excess of three times the Non-FLEX Equity option position limit in this manner, the Exchanges should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchanges to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

The Commission believes that it is reasonable to treat FLEX Equity options differently than regular standardized options. FLEX options compete directly with the OTC options. The Commission believes that it would be beneficial to attract OTC activity back to a more transparent market with a clearinghouse guarantee. Hence, a liberalization of position limits for FLEX Equity options is a measured deregulatory means to enable the Exchanges to compete with the OTC market while preserving important oversight safeguards.

As noted above, each of the Exchanges was required to submit a report assessing the effects of the pilot programs. This information was required to allow the Commission to evaluate the consequences of the programs and to determine whether permanent approval was appropriate. The Commission has reviewed these reports. Although the Commission cannot entirely rule out the potential for future adverse effects on the securities markets for the FLEX Equity options or component securities underlying FLEX Equity options, the reports support permanent approval of the pilots because such effects and abuses have not occurred over the two year pilot period.

In reports, the Exchanges indicate that their experiences with the pilot programs have been positive. Generally, none of the Exchanges note a change in the types of strategies used by FLEX Equity options market participants, nor do they believe that market participants are using FLEX Equity options in lieu of existing standardized equity options. Although the PCX experienced new activity by market makers, the Exchanges generally indicate that the types of market participants using FLEX Equity options during the pilots remained consistent to those using the product before the elimination of position and exercise limits. The average size of the FLEX Equity option contract increased to varying degrees on all of the Exchanges. The size of the largest FLEX Equity option contract also increased to varying degrees on each of the Exchanges during the pilots. Despite

[13] *See* Securities Exchange Act Release No. 41848 (September 9, 1999), 64 FR 50846 (September 20, 1999).

[14] Telephone call between Tim Thompson, CBOE, and Christine Richardson, on December 10, 1999; telephone call between Robert Pacileo, PCX, and Christine Richardson, on December 10, 1999. The Amex proposal explicitly states that the same terms and conditions applicable during the pilot will remain in effect after the proposal is permanently approved.

[15] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[16] *See, e.g.,* Amex Rules 900G through 909G.

this increase, FLEX Equity options represented a very small percentage of options transactions when compared to the standardized equity market. Further, although each of the Exchanges generally experienced an increase in trading activity and size of contracts during the pilot period, a very insignificant number of positions actually exceeded three times the standardized options position limit. Based on the above, the Exchanges concluded that the elimination of position and exercise limits for FLEX Equity options did not have any impact on the prices of the underlying stocks during the establishment or unwinding of FLEX Equity positions greater than three times the standard position limit.

Finally, given the size and sophisticated nature of the FLEX Equity options market, the reporting and margin requirements, and the fact that the pilot programs have run the past two years without incident, the Commission believes that eliminating position and exercise limits for FLEX Equity options on a permanent basis does not substantially increase manipulative concerns. The Commission continues to believe that the enhanced market surveillance of large positions should help the Exchanges to take the appropriate action in order to avoid any manipulation or market risk concerns. The Commission expects the Exchanges to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in FLEX options and the underlying stocks, should any unanticipated adverse market effects develop. In summary, because of the special nature of the FLEX Equity markets, the Commission believes that the Exchanges' proposals should be approved on a permanent basis. In permanently approving the proposals, the Commission believes that the distinctions between the FLEX Equity options market and the standardized equity options market, as described above, warrant the different regulatory applications of position and exercise limits under the Act.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that because approval of the permanent approval of the proposals will allow the pilot programs to continue uninterrupted based on the same terms and conditions of original pilot, it is consistent with the protection of investors and the public interest to approve the proposed rule changes on an accelerated basis. Further, a full 21-day comment period was provided and no comments were received. Accordingly, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule changes.[17]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule changes (SR–Amex–99–40; SR–PCX–99–41; SR–CBOE–99–59) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–32821 Filed 12–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42224; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 5 to Proposed Rule Change by the New York Stock Exchange, Inc. to Revise Exchange Rule 92, ''Limitations on Members' Trading Because of Customers' Orders''

December 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 1999, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 5 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As originally filed in 1994, the proposed rule change would amend Exchange Rule 92 (''Rule 92'') to permit NYSE member organizations to trade along with their customers when such member organizations liquidate a block facilitation position or engage in bona fide arbitrage or risk arbitrage. Amendment No. 5 to the proposal clarifies the limited exception for transactions effected to hedge a customer facilitation position, and provides further explanation of how the revised Rule 92 will operate.

The following is the text of the proposed rule change marked to reflect all of the proposed changes.[3] Additions to the current text of Exchange Rule 92 appear in *italics* while deletions appear in [brackets].

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted

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[17] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As presented, the text of the proposed rule change incorporates all of the proposed changes made to the original rule proposal by Amendment Nos. 1, 2, 3, 4, and 5. *See* Securities Exchange Act Release Nos. 35139 (Dec. 22, 1994), 60 FR 156 (Jan. 3, 1995) (notice of filing of proposed rule change, including Amendment No. 1); 36015 (July 21, 1995), 60 FR 38875 (July 28, 1995) (notice of filing of Amendment No. 2); 37428 (July 11, 1996), 61 FR 37523 (July 18, 1996) (notice of filing of Amendment No. 3); 39634 (Feb. 9, 1998), 63 FR 8244 (Feb. 18, 1998) (notice of filing of Amendment No. 4). On November 22, 1999, the Exchange submitted a technical correction to Amendment No. 5 to better identify the cumulative proposed changes to Exchange Rule 92. *See* Electronic mail message from Donald Siemer, Director, Market Surveillance, Exchange, to Michael L. Loftus, Special Counsel, Division of Market Regulation, Commission, dated November 22, 1999.

limited price order to sell such security in the unit of trading for a customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a ''proprietary order''), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more;

(2) the member or member organization is creating a bona fide hedge (''hedge'') and (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the size of the hedge is commensurate with the risk it offsets; (iii) the risk to be offset is the result of a position acquired in the course of facilitating a customer's order; and (iv) the customer's order is for 10,000 shares or more;

(3) the member or member organization is modifying an existing hedge and (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; (ii) the hedge was created to offset a position acquired in the course of facilitating a customer's order; and (iii) the customer's order is for 10,000 shares or more; or

(4) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an ''arbitrage account'').

(c) The provisions of this Rule shall not apply *to:*

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers[, or]*;*

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order[.]*;*

(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Securities and Exchange Commission Rule 19c–3 in a security listed on the Exchange;

(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange; and

(5) transactions made to correct bona fide errors.

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 This Rule shall apply to any agency or proprietary transaction effected on the Exchange if such transaction (''Exchange transaction'') is part of a group of related transactions that together have the effects prohibited by the Rule, regardless of whether (i) one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects.

.30 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.40 For purposes of paragraph (b) above, the term ''account of an individual investor'' shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term ''proprietary facilitation account'' shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) and (b)(4) above, the terms ''bona fide hedge'', ''bona fide arbitrage'' and ''risk arbitrage'' shall have the meaning ascribed to such terms in Securities Exchange Act Release No. 15533, January 29, 1979. All transactions effected pursuant to paragraph (b)(4) above must be recorded in an arbitrage account.

.50 For purposes of paragraph (b)(2) above, a hedge will be deemed to be ''clearly related'' if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. A member shall mark all memoranda of orders to identify each transaction creating or modifying a hedge as permitted under this Rule.

[.10] *.60* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

[.20] *.70* See paragraph (c)(i) of Rule 800 (Basket Trading: Applicability and Definitions) and paragraph (d)(ii) of Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the ''Off-Hours Trading Facility'' (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As reflected in the original filing and Amendment Nos. 1, 2, 3, and 4 thereto, the proposed rule change would establish limited exceptions to Rule 92 that permit NYSE member organizations to trade along with their customers when liquidating a block facilitation position, hedging a previously established facilitation position, or engaging in bona fide arbitrage or risk arbitrage. Amendment No. 4 to the filing proposed to extend the application of Rule 92 to trades effected by an NYSE member or member organization in

NYSE-listed securities, even if such trades occurred on other market centers (certain exceptions would be provided to over-the-counter market makers and specialists on regional exchanges).

a. Bona Fide Hedge Exception

The Exchange seeks to clarify the proposed exception from Rule 92 that would allow NYSE members or member organizations to trade along with a customer in the same security when the member or member organization engages in proprietary bona fide hedge transactions. Under the proposal, the creation of a bona fide hedge (''hedge'') must occur so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related. A hedge will be deemed to be ''clearly related'' to the transaction precipitating the hedge if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. In addition, the size of the hedge must be commensurate with the risk it offsets. The proposal also requires that the risk to be offset must result from a position acquired when the member or member organization facilitated a customer's order. Finally, the customer's order that the NYSE member or member organization trades along with must be for 10,000 shares or more.

The proposal also would permit NYSE members or member organizations to modify an existing hedge that was created to offset a position acquired in a customer facilitation transaction. The hedge, as modified, must remain commensurate with the risk it offsets, and the customer's order that the NYSE member or member organization trades along with must be for 10,000 shares or more.

b. Application of Rule 92 to Other Market Centers

The proposal prohibits NYSE members or member organizations from entering an order for their own or related accounts if the person entering the order has knowledge of a customer order capable of execution at the same price. Under Amendment No. 4 to the proposal, this prohibition would apply whether the trade for the customer or the NYSE member or member organization occurred on the Exchange or any other market center. Amendment No. 4 provides specific guidelines to help determine when Rule 92 would apply to proprietary or agency trades effected on another market center, including situations where neither segment nor ''leg'' of a customer facilitation transaction occurred on the Exchange.

The Exchange seeks to further revise the proposed application of Rule 92. Specifically, the Exchange proposes to apply Rule 92 only in those situations where one or both trades (proprietary or agency) of a customer facilitation transaction are effected on the NYSE. If neither segment of a customer facilitation transaction occurs on the Exchange, Rule 92 would not apply.

c. Bona Fide Errors

The proposal also would permit NYSE members and member organizations to trade along with customers when effecting a transaction to correct a bona fide error.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [4] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Exchange also believes that the proposed rule change will enable NYSE members and member organizations to add depth and liquidity to the Exchange's market, and help protect investors by requiring the express permission of customers in trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at 450 Fifth street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by January 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–32819 Filed 12–17–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42225; File No. SR–NYSE–99–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. to Amend its Minor Rule Violation Plan

December 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On November 12, 1999 the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A'' for imposition of fines for minor violations of rules by adding to the List failure to comply with the provisions of NYSE Rules 35, 345A and 440A.[4] In addition, it proposes to clarify that paragraph (c) of currently listed NYSE Rule 472 encompasses telemarketing scripts. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under NYSE Rule 476A procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 476A provides that the Exchange may impose a fine (ranging from $500 to $2,500 for individuals and $1,000 to $5,000 for member organizations) on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the NYSE Rule 476A procedure is to provide for a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time-consuming than would be warranted given the nature of the violation, or when the violation calls for a stronger regulatory response than a cautionary letter would convey. NYSE Rule 476A preserves due process rights, identifies those rule violations which may be the subject of summary fines, and includes a schedule of fines.

The Exchange wishes to emphasize the importance it places upon compliance with the rules addressed in this filing. Accordingly, the Exchange may, upon investigation, determination that a violation of any of these rules is of a minor nature and thus properly addressed by the procedures adopted under NYSE Rule 476A. However, in those instances where investigation reveals a more serious violation of these rules, the Exchange is prepared to provide an appropriate regulatory response which may include full disciplinary procedures available under NYSE Rule 476.

In SR–NYSE–84–27,[5] which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of NYSE Rule 476A as experience with it was gained.

The Exchange is seeking approval to add to the List of Rules subject to possible imposition of fines under NYSE Rule476A procdures failure by members or member organizations to comply with the provisions of: NYSE Rule 35 which requires that employees of members and member organizations be registered with, qualified by, and approved by the Exchange before being admitted to the Exchange Floor; NYSE Rule 345A which requires ongoing compliance with Continuing Education requirements; and NYSE Rule 440A which outlines certain telemarketing restrictions. In addition, the Exchange seeks to clarify that currently listed NYSE Rule 472(c), which addresses record retention requirements of certain public communications, encompasses telemarketing scripts.

The following outlines the proposed additions to the 476A list and includes specific examples of NYSE Rule 476A violations;

(i) NYSE Rule 35 (''Floor Employees to be Registered'')

• Failure of a Floor employee to take reasonable and appropriate steps to register with, become qualified by, and approved by the Exchange.

• Failure of a member or member organization to ensure that an employee admitted to the Floor of the Exchange has been registered with, qualified by, and approved by the Exchange. Specific violations may include:

(a) Failure of a member or member organization to submit a Floor employees' Form U–4 and/or fingerprint card;

(b) Failure of a member or member organization to ensure that a Floor employee has taken and passed appropriate qualification examinations and undergone required training.

For example, Trading Assistants (*e.g.,* Post Clerks and Booth Clerks) are required to undergo 3 months of training and must take and pass the Trading Assistant Qualification Examination (Series 25) prior to performing the functions of a Trading Assistant on the Floor of the Exchange.

(ii) NYSE Rule 345A (''Continuing Education For Registered Persons'')

Regulatory Element—Rule 345A(a)

NYSE Rule 345A(a) addresses a member or member organization's responsibilities under the Regulatory Element of the Continuing Education program. The Regulatory Element requires that each registered person, not otherwise exempt from the rule, complete a prescribed computer-based training session within 120 days of the second anniversary of their initial registration date and every three years thereafter. Noncompliance with Regulatory Element requirements results in an individual's registration being deemed inactive until the person fulfills all applicable elements. Members and member organizations must ensure that such persons are not permitted to engage in, or be compensated for, activities requiring registration during this inactive registration period. Specific violations of 345A(a) subject to penalty under 476A include:

• Failure of a registered person to complete the continuing education requirements prescribed by NYSE Rule 345A(a).[6]

• Failure of a member or member organization to restrict the activities of a registered person who fails to comply with the continuing education

[3] In Amendment No. 1, the Exchange made technical changes to the proposal. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 10, 1999 (''Amendment No. 1'').

[4] In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act to allow self-regulatory organizations to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

[5] *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985).

[6] *See* Amendment No. 1, *supra* note 3.

requirements prescribed by NYSE Rule 345A(a).

Firm Element—NYSE Rule 345A(b)

NYSE Rule 345A(b) addresses a member or member organization's responsibilities under the Firm Element of the Continuing Education program. The Firm Element requires that each member or member organization develop an analysis of their training needs and develop a written training plan, evaluated and updated annually, designed to enhance the securities knowledge, skill, and professionalism of certain ''covered registered persons.'' ''Covered registered persons'' include any registered person who has direct contact with customers in the conduct of the member's or member organization's securities sale, trading or investment banking activities, and the immediate supervisors of such persons. At a minimum, the plan must take into consideration the member or member organization's size, organizational structure and scope of business activities, as well as registered persons' Regulatory Element performance.

Specific violations of NYSE Rule 345A(b) subject to penalty under NYSE Rule 476A include:

• Failure of a ''covered registered person'' to take appropriate and reasonable steps to participate in a continuing education program as prescribed by NYSE Rule 345A(b) (Firm Element).

• Failure of a member or member organization to adequately ensure that a ''covered registered person'' participates in a continuing education program prescribed by NYSE Rule 345A(b).

• Failure of a member or member organization to annually analyze their training needs as prescribed by NYSE Rule 345A(b) and to update their written training plan accordingly.

• Failure of a member or member organization to develop, administer, and maintain appropriate records for a written training plan as prescribed by NYSE Rule 345A(b).

(iii) NYSE Rule 440A (''Telephone Solicitation'')

Violations subject to the provisions of 476A would include:

• Making a telephone call to the residence of a person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time. [NYSE Rule 440A(a)]

• Making a telephone call to the residence of a person for the purpose of soliciting the purchase of securities or related services but failing to promptly and clearly disclose the identity of the caller and member organization, the telephone number at which the caller may be contacted, and the purpose of the call. [NYSE Rule 440A(b)]

• Failure of a member or member organization to make and/or maintain a centralized list of persons who have informed the member, member organization or any employee thereof, that they do not wish to receive telephone solicitations. [NYSE Rule 440A(d)]

• Failure to obtain a customer's express written authorization on a negotiable instrument obtained from the customer as payment for the purchase of securities and/or to maintain such authorization for a period of three years. [NYSE Rule 440A(e)]

(iv) NYSE Rule 472 (''Communications with the Public'')

NYSE Rule 472(c), which is currently on the NYSE Rule 476A Violations List, requires that certain communications with customers or the public be retained in accordance with NYSE Rule 440 (''Books and Records''). This requirement encompasses telemarketing scripts.

2. Statutory Basis

The Exchange represents that the proposed rule change will advance the objectives of Section 6(b)(6) of the Act[7] in that it will provide a procedure whereby member organizations can be ''appropriately disciplined'' in those instances where a rule violation is minor in nature, but a sanction more serious than a warning or a cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)[8] and 6(d)(1)[9] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(d)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–38 and should be submitted by January 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–32820 Filed 12–17–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its

[10] 17 CFR 200.30–3(a)(12).

information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Worker's Compensation Letter (SSA–L1708), Worker Compensation Questionnaire (SSA–1708)—0960–NEW. A review of SSA records revealed that beneficiaries receiving disability benefits, who were first placed in worker's compensation offset, have an extremely high potential for payment error, because an increase in or expiration of worker's compensation was not reported for/by such beneficiaries. Therefore, SSA is proposing to test a new form that collects information on changes in WC status. The information collected will be used to evaluate whether this is an effective method of detecting changes in workers compensation payments and determining payment accuracy. The respondents are a random sample of beneficiaries receiving disability benefits with workers compensation offset.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 33 hours.

2. Payee Interview (SSA–835), Beneficiary Interview (SSA–836), Custodian Interview (SSA–837)—0960–0588. SSA is conducting a three-tier review process of the representative payee program. As part of this review process, SSA will conduct interviews with title II Disability Insurance and title XVI Supplemental Security Income recipients and their representative payees. The information obtained on the interview forms will be used to assess the effectiveness of the policies and procedures that govern the postentitlement selection and appointment of the approximately 7 million payees in the title II and title XVI programs.

	SSA–835	SSA–836	SSA–837
Number of Respondents	1,000	500	190
Frequency of Response	1	1	1
Average Burden Per Response (Minutes)	20	15	10
Estimated Annual Burden (Hours)	333	125	32

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: OMB Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: December 14, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration

[FR Doc. 99–32806 Filed 12–17–99; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice 3178]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

ACTION: Notice.

SUMMARY: At its Eighteenth Meeting in Hobart, Tasmania, October 25 to November 5, 1999, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. A key result was the adoption of a conservation measure which provides for a comprehensive catch documentation scheme for the potentially threatened toothfish. Other measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the eighteenth meeting of CCAMLR. For all of the Conservation Measures in force, see the CCAMLR website (www.ccamlr.org). This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments on or before January 19, 2000.

FOR FURTHER INFORMATION CONTACT: Erica Keen Thomas, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; 202–647–3262.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according

protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Remaining in Force: The Commission agreed that the Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V, 7/V, 18/XIII, 19/IX, 29/XVI, 31/X, 32/X, 40/X, 45/XIV, 51/XII, 61/XII, 62/XI, 63/XV, 64/XII, 65/XII, 72/XVII, 73/XVII, 95/XIV, 106/XV, 118/XVII, 119/XVII, 121/XVI, 122/XVI, 129/XVI, 146/XVII, 148/XVII and 160/XVII should remain in force as they stand. For the text of CCAMLR Conservation Measures remaining in force, see 61 FR 66723, dated December 18, 1996, 63 FR 5587, dated February 3, 1998 and 63 FR 300 dated December 22, 1998.

New Conservation Measures: At its Eighteenth Annual Meeting in Hobart, Tasmania, October 25 to November 5, 1999, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) revised several of its previously adopted Conservation Measures adopted new measures. The new and revised measures follow:

Conservation Measures adopted at CCAMLR–XVIII:

Conservation Measure 147/XVIII [1]— Provisions To Ensure Compliance With CCAMLR Conservation Measures by Vessels, Including Cooperation Between Contracting Parties

1. Contracting Parties shall undertake inspections of those fishing vessels that intend to land or transhipment *Dissostichus* spp. at their ports. The inspection shall be for the purpose of determining that the catch to be unloaded or transhipped is accompanied by the *Dissostichus* catch document required by Conservation Measure 170/XVIII, that the catch agrees with the information recorded on the document and, if the vessel carried out harvesting activities in the Convention Area, that these activities were carried out in accordance with CCAMLR conservation measures.

2. To facilitate these inspections, Contracting Parties shall require vessels to provide advance notice of their entry into port. The inspection shall be conducted within 48 hours of port entry and shall be carried out in an expeditious fashion. It shall impose no undue burdens on the vessel or its crew, and shall be guided by the relevant provisions of the CCAMLR System of Inspection.

3. In the event that there is evidence that the vessel has fished in contravention of the CCAMLR conservation measures, the catch shall not be landed or transhipped. The Contracting Party will inform the Flag State of the vessel of its inspection findings and will cooperate with the Flag State in taking such appropriate action as is required to investigate the alleged infringement, and, if necessary, apply appropriate sanctions in accordance with national legislation.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 150/XvIII— Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 for the 1999/2000 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 for the 1999/2000 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 1999/2000 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) every vessel when undertaking an experimental harvesting regime shall expend its first 200 000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 150/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) if a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime; and

(v) after completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2000 shall be submitted to CCAMLR by 31 August 2000.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 181/XVIII.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 181/XVIII.

6. Fishing vessels shall participate in the experimental harvest regime independently (i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Annex 150/A

Locations of Fishing Areas for the Experimental Harvest Regime of the Exploratory Crab Fishery

Conservation Measure 170/XVIII—Catch Documentation Scheme for Dissostichus spp.

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures.

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus* spp., hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or transhipps *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this Scheme may issue *Dissostichus* catch document forms to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) the name, address, telephone and fax numbers of the issuing authority;

(ii) the name, home port, national registry number, and call sign of the vessel and, if applicable, its Lloyd's registration number;

(iii) the number of the licence or permit issued to the vessel, as applicable;

(iv) the weight of each *Dissostichus* species landed or transhipped by product type, and

(a) by CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) by FAO statistical area, subarea or division if caught outside the Convention Area;

(v) the dates within which the catch was taken;

(vi) the date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) the name, address, telephone and fax numbers of the receiver or receivers of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 170/A to this measure. A sample catch document is attached to the annex.

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into its territory be accompanied by the export-validated *Dissostichus* catch document or documents that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(a) includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 170/A to this measure; and

(b) includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the import documentation of each shipment of *Dissostichus* spp. imported into its territory to verify that it includes the export-validated *Dissostichus* catch document or documents that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document, the exporting State whose national authority validated the document and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall provide copies quarterly to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from *Dissostichus* catch documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party may require additional verification of catch documents, including *inter alia* the use of VMS, in respect of catches by its flag vessels outside the Convention Area, when landed at and exported from its territory.

ANNEX 170/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) a four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) a three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch

document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) the master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) if a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) if a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division;

(iv) the master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the trip start date, the species, processing type or types, the net landed weight and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number;

A3. If the Flag State determines that the catch landed or transhipped as reported by the vessel is consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the master by the most rapid electronic means available.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) in the case of a transhipment, the master shall confirm the transhipment by obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is transferred;

(ii) in the case of a landing, the master shall confirm the landing by obtaining the signature on the *Dissostichus* catch document of a responsible official at the port of landing;

(iii) in the case of a landing, the master shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing; and

(iv) in the event that the catch is divided upon landing, the master shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master shall sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master shall retain the original copies of the signed *Dissostichus* catch document or documents and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) the master of the receiving vessel shall confirm the landing by obtaining the signature on the *Dissostichus* catch document of a responsible official at the port of landing;

(ii) the master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing; and

(iii) in the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master of the receiving vessel shall sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document or documents that account for all the *Dissostichus* spp. contained in the shipment:

(i) the exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) the exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) the exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) the exporter shall obtain validation of *Dissostichus* catch document by the responsible authority of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document or documents that account for all the *Dissostichus* spp. contained in the shipment:

(i) the re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) the re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) the re-exporter shall obtain validation of the above details by the responsible authority of the exporting State.

An example form for re-export is attached to this annex.

Conservation Measure 171/xviIi—Prohibition of Directed Fishery on Gobionotothen Gibberifrons, Chaenocephalus Aceratus, Pseudochaenichthys Georgianus, Lepidonotothen Squamifrons and Patagonotothen Guntheri in Statistical Subarea 48.3

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Directed fishing on *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3 is prohibited until a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 172/xviii [1]— Prohibition on Directed Fishing for Dissostichus Spp. Except in Accordance with Specific Conservation Measures in the 1999/2000 Season

The Commission,

Concerned to ensure the regulation of directed fishing for *Dissostichus* spp. in all statistical areas and subareas in the Convention Area, and

Noting that conservation measures in respect of the regulation of *Dissostichus* spp. have been agreed for all areas except Statistical Subareas 48.5 and 88.3 and Statistical Divisions 58.4.1 (east of 90° E) and 58.5.1 and longline fishing areas in Statistical Division 58.5.2,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subareas 48.5 and 88.3, and Statistical Divisions 58.4.1 (east of 90°E) and 58.5.1 is prohibited from 1 December 1999 to 30 November 2000. Directed fishing by longlining in Statistical Division 58.5.2 is prohibited from 1 December 1999 to 30 November 2000.

[1] Except in waters adjacent to the Kerguelen Islands.

Minimisation of the Incidental Mortality of Seabirds and Marine Mammals in the Course of Trawl Fishing in the Convention Area

Conservation Measure 173/XVIII [1]

The Commission,

Noting the need to reduce the incidental mortality of or injury to seabirds and marine mammals from fishing operations,

Adopts the following measures to reduce the incidental mortality of or injury to seabirds and marine mammals during trawl fishing.

1. The use of net monitor cables on vessels in the CCAMLR Convention Area is prohibited.

2. Vessels operating within the Convention Area should at all times arrange the location and level of lighting so as to minimise illumination directed out from the vessel, consistent with the safe operation of the vessel.

3. The discharge of offal shall be prohibited during the shooting and hauling of trawl gear.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 174/xvIII— Precautionary Catch Limit for Electrona Carlsbergi in Statistical Subarea 48.3 for the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. For the purposes of this conservation measure the fishing season for *Electrona carlsbergi* is defined as the period from 1 December 1999 to 30 November 2000.

2. The total catch of *Electrona carlsbergi* in the 1999/2000 season shall be limited to 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1999/2000 season shall be limited to 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′S, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 1999/2000 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the meeting of the Working Group on Fish Stock Assessment in 2000.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever is sooner.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever is sooner.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch in any one haul of any species other than the target species

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tonnes,

then the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this conservation measure:

(i) the Catch Reporting System set out in Conservation Measure 40/X shall apply in the 1999/2000 season;

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XVI shall also apply in the 1999/2000 season. For the purposes of Conservation Measure 122/XVI, the target species is *Electrona carlsbergi,* and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi;* and

(iii) the Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure 121/XVI shall also apply in the 1999/2000 season. For the purposes of Conservation Measure 121/XVI, the target species is *Electrona carlsbergi,* and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 3(ii) of Conservation Measure 121/XVI a representative sample shall be a minimum of 500 fish.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 175/xviIi— Limitation of the Total Catch of Champsocephalus Gunnari in Statistical Subarea 48.3 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. The total catch of *Champsocephalus gunnari* in the 1999/2000 season shall be limited to 4 036 tonnes in Statistical Subarea 48.3.

2. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure

95/XIV reaches its by-catch limit or if the total catch of *Champsocephalus gunnari* reaches 4 036 tonnes, whichever is sooner.

3. If, in the course of the directed fishery for *Champsocephalus gunnari,* the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tonnes, then

the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XIV exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

6. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be closed from 1 March to 31 May 2000.

7. Each vessel participating in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1999/2000 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of this conservation measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1999/2000 season; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XVI shall apply for *Champsocephalus gunnari.* Data shall be reported on a haul-by-haul basis.

9. Fine-scale biological data, as required under Conservation Measure 121/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 176/xviIi—Fishery for Dissostichus Eleginoides in Statistical Division 58.5.2 for the 1999/2000 Season

1. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be limited to 3 585 tonnes in the 1999/2000 season.

2. For the purpose of this fishery for *Dissostichus eleginoides,* the 1999/2000 fishing season is defined as the period from 1 December 1999 to 30 November 2000.

3. Fishing shall cease if the by-catch of any species reaches its by-catch limit as detailed in Conservation Measure 178/XVIII.

4. The catch limit may only be taken by trawling.

5. Each vessel participating in the fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall have at least one scientific observer, and include, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities.

6. Each vessel operating in the fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

7. A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods viz: day 1 to day 10, day 11 to day 20, day 21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for the period and shall, by electronic transmission, cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) such reports will specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

8. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Dissostichus eleginoides* and all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species as detailed in the CCAMLR Scientific Observers Manual (Part III, Section 1) for finfish fisheries:

(a) length measurements shall be to the nearest centimetre below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

Conservation Measure 177/XVIII—Fishery for Champsocephalus Gunnari in Statistical Division 58.5.2 in the 1999/2000 Season

1. The total catch for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be limited to 916 tonnes in the 1999/2000 season.

2. Areas in Statistical Division 58.5.2 outside that defined in paragraph 4 below shall be closed to directed fishing for *Champsocephalus gunnari.*

3. Fishing shall cease if the by-catch of any of the species reaches its by-catch limit as detailed in Conservation Measure 178/XVIII.

4. For the purpose of this fishery for *Champsocephalus gunnari,* the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) starting at the point where the meridian of longitude 72°15′E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;

(ii) then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;

(iv) then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E; and

(vi) then southwesterly along the geodesic to the point of commencement.

A chart illustrating the above definition is appended to this conservation measure (Annex 177/A).

5. For the purposes of this fishery for *Champsocephalus gunnari,* the 1999/2000 season is defined as the period from 1 December 1999 to 30 November 2000.

6. The catch limit may only be taken by trawling.

7. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days [2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. Each vessel participating in the fishery shall have at least one scientific observer, and include, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities.

9. Each vessel operating in the fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

10. A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

11. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) length measurements shall be to the nearest centimetre below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measures 51/XII, pending the adoption of a more appropriate period by the Commission.

Annex 177/A

Conservation Measure 178/XVIII—Limitation of the By-Catch in Statistical Division 58.5.2 in the 1999/2000 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 1999/2000 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 1999/2000 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, and the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of any by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days [2]. The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measures 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 179/xvIII—Limits on the Fishery for Dissostichus Eleginoides in Statistical Subarea 48.3 for the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 1999/2000 season shall be limited to 5 310 tonnes.

2. For the purposes of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1999/2000 fishing season is defined as the period from 1 May to 31 August 2000, or until the catch limit is reached, whichever is the sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.3 in the 1999/2000 season shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this conservation measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1999/2000 season, commencing on 1 May 2000; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XVI shall apply in the 1999/2000 season, commencing on 1 May 2000. Data shall be submitted on a haul-by-haul basis. For the purpose of Conservation Measure 122/XVI the target species is *Dissostichus eleginoides* and ''by-catch species'' are defined as any species other than *Dissostichus eleginoides.*

5. Fine-scale biological data, as required under Conservation Measure 121/XVI shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

6. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.3 is prohibited, except in relation to the experimental pot fishery for *Dissostichus eleginoides* notified for the 1999/2000 season, to which the provisions of Conservation Measure 64/XII shall apply. The catch in this experimental fishery shall count towards the catch limit in paragraph 1.

Conservation Measure 180/xvIiI—Catch Limit on Dissostichus Eleginoides and Dissostichus Mawsoni in Statistical Subarea 48.4

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be limited to 28 tonnes per season.

2. Taking of *Dissostichus mawsoni,* other than for scientific research purposes, is prohibited.

3. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the fishing season shall be defined as that applied in Subarea 48.3 in any particular season, or until the catch limit for *Dissostichus eleginoides* in Subarea 48.4 is reached, or until the catch limit for *Dissostichus eleginoides* in Subarea 48.3, as specified in any conservation measure, is reached, whichever is sooner.

4. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.4 shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

5. For the purpose of implementing this conservation measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XVI shall apply. Data shall be reported on a haul-by-haul basis. For the purposes of Conservation Measure 122/XVI, the target species is *Dissostichus eleginoides,* and ''by-catch species'' are defined as any species other than *Dissostichus eleginoides.*

6. Fine-scale biological data, as required under Conservation Measure 121/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

7. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be prohibited.

Conservation Measure 181/xviIi—Limits on the Crab Fishery in Statistical Subarea 48.3 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 1 December 1999 to 30 November 2000, or until the catch limit is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall be limited to 1 600 tonnes during the 1999/2000 crab fishing season.

5. Each vessel participating in the crab fishery in Statistical Subarea 48.3 in the 1999/2000 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

6. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorised to participate in the crab fishery.

7. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 2000 for crabs caught prior to 31 July 2000:

(i) the location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1.0° longitude) for each 10-day period;

(ii) the species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 181/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and

(iii) other relevant data, as possible, according to the requirements set out in Annex 181/A.

8. For the purposes of implementing this conservation measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

9. Data on catches taken between 31 July and 31 August 2000 shall be reported to CCAMLR by 30 September 2000 so that the data will be available to the Working Group on Fish Stock Assessment.

10. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g. bottom trawls) shall be prohibited.

11. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

12. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Annex 181/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data

Cruise Descriptions: cruise code, vessel code, permit number, year.

Pot Descriptions: diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions: date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions: retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

Biological Data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions: cruise code, vessel code, permit number.

Sample Descriptions: date, position at start of the set, compass bearing of the set, line number.

Data: species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 182/xviII [1, 2]— General Measures for Exploratory Fisheries For Dissostichus spp. in the Convention Area for the 1999/2000 Season

The Commission,

Noting the need for the distribution of fishing effort and catch in fine-scale rectangles [3] in these exploratory fisheries,

hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

3. In order to give effect to paragraph 2 above:

(i) the precise geographic position of a haul in trawl fisheries will be determined by the mid-point between the start-point and end-point of the haul;

(ii) the precise geographic position of a haul in longline fisheries will be determined by the centre-point of the line or lines deployed;

(iii) catch and effort information for each species by fine-scale rectangle shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 51/XII; and

(iv) the Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any fine-scale rectangle is likely to reach 100 tonnes, and fishing in that fine-scale rectangle shall be closed when that limit is reached.

4. If the by-catch of *Macrourus spp. in any one haul*

- is greater than 100 kg and exceeds 18% of the total catch of all fish by weight, or
- is equal to or greater than 2 tonnes, then

the fishing vessel shall move to another location at least 5 n miles distant [4]. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of *Macrourus* spp. exceeded 18% for a period of at least five days [5]. The location where the by-catch exceeded 18% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. The by-catch of any species other than *Macrourus* spp. in the exploratory fisheries in the Statistical Subareas and Divisions concerned shall be limited to 50 tonnes.

6. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

7. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 1999/2000 season shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing season.

8. The data collection plan (Annex 182/A) and research plan (Annex 182/B) shall be implemented. Data collected pursuant to the plan for the period up to 31 August 2000 shall be reported to CCAMLR by 30 September 2000 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2000. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands 2

[2] Except for waters adjacent to the Prince Edward Islands

[3] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the Statistical Subarea or Division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

[4] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[5] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Annex 182/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the five-day catch and effort reporting system (Conservation Measure 51/XII) and monthly fine-scale effort and biological data reporting system (Conservation Measures 121/XVI and 122/XVI).

2. All data required by the CCAMLR Scientific Observers Manual for finfish fisheries will be collected. These include:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by-haul catch and catch per effort by species;

(iii) haul-by-haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) number and mass by species of by-catch of fish and other organisms; and

(viii) observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) position and sea depth at each end of every line in a haul;

(ii) setting, soak, and hauling times;

(iii) number and species of fish lost at surface;

(iv) number of hooks set;

(v) bait type;

(vi) baiting success (%);

(vii) hook type; and

(viii) sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 182/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRU) as defined in Table 1 and Figure 1.

3. Any vessel wishing to undertake prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tonnes of *Dissostichus* spp. have been caught or 10 hauls completed in the SSRU, whichever is achieved first:

(i) a minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (v);

(ii) each haul must be separated by not less than 10 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) each haul shall comprise: for longlines, at least 3,500 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC–CAMLR–XI, Annex 5, Attachment E, paragraph 4).

(iv) each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process; and

(v) all data specified in the data collection plan (Annex 182/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

4. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tonnes of catch or 10 hauls in any SSRU are achieved during the 1999/2000 fishing season. The research activities must commence immediately when the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

Conservation Measure 183/xviII—Exploratory Fishery for Martialia Hyadesi in Statistical Subarea 48.3 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 7/V and 65/XII:

1. The total catch of *Martialia hyadesi* in the 1999/2000 season shall be limited to 2 500 tonnes.

2. For the purposes of this exploratory fishery, the fishing season is defined as the period from 1 December 1999 to 30 November 2000 or until the catch limit is reached, whichever is sooner.

3. For the purposes of implementing this conservation measure:

(i) the Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply;

(ii) the data required to complete the CCAMLR standard fine-scale catch and effort data form for squid jig fisheries (Form C3) shall be reported from each vessel. These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. These data shall be reported to CCAMLR by 31 August 2000 for catches taken prior to 31 July 2000; and

(iii) data on catches taken between 31 July 2000 and 31 August 2000 shall be reported to CCAMLR by 30 September 2000 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2000.

4. Each vessel participating in this exploratory fishery for *Martialia hyadesi* in Statistical Subarea 48.3 during the 1999/2000 season shall have at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities in this subarea during the fishing season.

5. The data collection plan in Annex 183/A shall be implemented. Data collected pursuant to the plan for the period up to 31 August 2000 shall be reported to CCAMLR by 30 September 2000 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2000. Such data collected after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 183/A

*Data Collection Plan for Exploratory Squid (**MARTIALIA HYADESI**) Fisheries in Statistical Subarea 48.3*

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1);

(ii) catch information (Form S2); and

(iii) biological data (Form S3).

Conservation Measure 184/XVIII—Exploratory Longline Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by the European Community and South Africa. The fishery shall be conducted by European Community (Portuguese-flagged) and South African-flagged vessels using longlining only.

2. The precautionary catch limit for this exploratory longline fishery in Statistical Subarea 48.6 shall be limited to 455 tonnes of *Dissostichus* spp. north of 60°S, and 455 tonnes of *Dissostichus* spp. south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.

3. For the purpose of this exploratory longline fishery, the 1999/2000 fishing season to the north of 60°S is defined as the period from 1 March to 31 August 2000. The 1999/2000 fishing season south of 60°S is defined as the period from 15 February to 15 October 2000.

4. The exploratory longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and 182/XVIII.

5. Each vessel participating in this exploratory longline fishery will be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

Conservation Measure 185/XVIII—Exploratory Trawl Fishery for Dissostichus spp. in Statistical Divisions 58.4.1 and 58.4.3 (Banzare and Elan Banks) in the 1999/2000 Season

The Commission,

Welcoming the notification of Australia of its intention to conduct an exploratory trawl fishery in Statistical Divisions 58.4.1 and 58.4.3 in the 1999/2000 season,

hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus* spp. by trawl in Statistical Division 58.4.1 west of 90°E and Statistical Division 58.4.3 shall be limited to the exploratory fishery by Australian-flagged vessels.

2. BANZARE Bank is defined as waters within the latitudes 55°S and 64°S and longitudes 73°30′E and 89°E. Elan Bank is defined as waters within the latitudes 55°S and 62°S and longitudes 60°E and 73°30′E.

3. The total catch of *Dissostichus* spp. in the 1999/2000 season taken by the trawl method shall not exceed 150 tonnes for BANZARE Bank and 145 tonnes for Elan Bank.

4. (i) There shall be no directed fishing for any species other than *Dissostichus* spp.

(ii) The by-catch of any species other than *Dissostichus* spp. shall not exceed 50 tonnes.

(iii) If in the course of a directed fishery, the by-catch in any one haul of any by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days.[2].

The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. For the purposes of this exploratory trawl fishery, the 1999/2000 fishing season is defined as the period from 1 December 1999 to 30 November 2000 or until the catch limit of the target or by-catch species is reached, whichever is the sooner.

6. Each vessel participating in this exploratory trawl fishery for *Dissostichus* spp. in Statistical Divisions 58.4.1 and 58.4.3 in the 1999/2000 season shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities within these divisions.

7. Each vessel operating in this exploratory trawl fishery for *Dissostichus* spp. in Statistical Divisions 58.4.1 and 58.4.3 shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

8. For the purpose of implementing this conservation measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply; and

(ii) the monthly fine-scale biological data, as required under Conservation Measure 121/XVI, shall be recorded and reported in accordance with the System of International Scientific Observation when undertaking commercial fishing in Statistical Divisions 58.4.1 and 58.4.3.

9. The total number and weight of *Dissostichus* spp. discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

10. The research and fisheries operations plan shall be as set out in Annex 182/A and 182/B of Conservation Measure 182/XVIII (General Measures for Exploratory Fisheries for *Dissostichus* spp. in the Convention Area for the 1999/2000 Season), with the following variations:

(i) There shall be two small-scale research units, one for BANZARE Bank and one for Elan Bank, as defined in paragraph 2 above.

(ii) data reporting measures specific to the longlining method shall not apply.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.
[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 186/XVIII—New Trawl Fishery for Chaenodraco Wilsoni, Lepidonotothen Kempi, Trematomus Eulepidotus, Pleuragramma Antarcticum and Exploratory Trawl Fishery for Dissostichus spp. in Statistical Division 58.4.2 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus Pleuragramma antarcticum* and *Dissostichus* spp. by trawl in Statistical Division 58.4.2 between the longitudes of 45°E and 80°E shall be limited to the new and exploratory fisheries by Australian-flagged vessels.

2. The total catch of all species in the 1999/2000 season shall not exceed 1,500 tonnes.

3. The catch of *Chaenodraco wilsoni* in the 1999/2000 season shall be taken by the midwater trawl method only and shall not exceed 500 tonnes.

4. The catches of *Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in the 1999/2000 season shall be taken by the midwater trawl method only, and shall not exceed 300 tonnes for any one species.

5. The total catch of *Dissostichus* spp. taken by the trawl method shall not exceed 500 tonnes, of which no more than 150 tonnes shall be taken in each of the zones bounded by the longitudes 50°E and 60°E, 60°E and 70°E, 70°E and 80°E respectively, and 50 tonnes in the zone bounded by 45°E and 50°E.

6. (i) There shall be no directed fishing for any species other than those

specified in paragraph 1 of this conservation measure.

(ii) The by-catch of any fish species other than those specified in paragraph 1 of this conservation measure shall not exceed 50 tonnes.

(iii) If, in the course of a directed fishery, the by-catch in any one haul of any by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days [2]. The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

7. For the purposes of these new and exploratory trawl fisheries, the 1999/2000 fishing season is defined as the period from 1 December 1999 to 30 November 2000 or until the catch limit is reached, whichever is the sooner.

8. Each vessel participating in these new and exploratory trawl fisheries in Statistical Division 58.4.2 in the 1999/2000 season shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities within this division.

9. Each vessel operating in these new and exploratory trawl fisheries in Statistical Division 58.4.2 shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

10. For the purpose of implementing this conservation measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply; and

(ii) the monthly fine-scale biological data, as required under Conservation Measure 121/XVI, shall be recorded and reported in accordance with the System of International Scientific Observation.

11. The total number and weight of *Dissostichus* spp. discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

12. The data collection and research plans in Annex 186/A shall be implemented and the results reported to CCAMLR not later than three months after the closure of the fishery.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Annex 186/A

Data Collection and Research Plans

1. In the case of midwater trawling for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum,* the data collection and research plans shall be as set out in Annex 182/A and 182/B of Conservation Measure 182/XVIII (General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area for the 1999/2000 Season), with the following variations:

(i) there shall be four small-scale research units, bounded by the longitudes 45°E to 50°E, 50°E to 60°E, 60°E to 70°E and 70°E to 80°E respectively; and

(ii) data reporting measures specific to the longlining method shall not apply.

2. Demersal trawling for *Dissostichus spp.* in water shallower than 550 m shall be prohibited except for the research activities described below:

(i) demersal trawling shall be allowed only in designated 'open' areas on the upper and mid-slope in depths greater than 550 m;

(ii) the manner in which areas are designated ''open'' and ''closed'' for demersal trawling will be determined according to the following procedure:

(a) open and closed areas will consist of a series of north-south strips extending from the coast to beyond the foot of the continental slope. Each strip will be one degree of longitude wide;

(b) in the first instance, when the vessel has found an appropriate area for prospecting or fishing, it will designate the strip as ''open'', with the area to be fished to be approximately centered in that strip;

(c) a single prospecting haul will be permitted in that strip before it is designated as open or closed, to establish if an aggregation of interest is present. There must be a minimum of 30 minutes of longitude between prospecting hauls where no strip is designated ''open'';

(d) whenever a strip is designated ''open'', at least one strip adjacent to that strip must be designated as ''closed''. Any remnant strips less than one degree wide resulting from the previous selection of open and closed strips, will be designated as closed;

(e) once a strip is designated closed it cannot be subsequently fished in that season by any method that allows fishing gear to contact the bottom;

(f) prior to commercial fishing in an open strip, the vessel must undertake the survey trawls in the open strip as described below. The survey trawls in the adjacent closed strip must be undertaken prior to the vessel fishing a new strip. If the adjacent closed strip has already been surveyed, a new survey is not necessary; and

(g) when the vessel wishes to fish in a new strip, it must not choose a strip already closed. Once a new strip is designated, conditions as described in paragraphs (b) to (f) will apply to that strip.

3. Survey trawls in each open strip and its adjacent closed strip will be conducted according to the following scheme:

(i) each pair of strips will be divided between the shelf area above 550 m and the slope area below 550 m. In each open and closed strip the following research shall be undertaken:

(a) in the section deeper than 550 m, two stations (whose locations have been randomly pre-selected according to depth and longitude) shall be sampled. At each of these stations a beam-trawl sample of benthos and a bottom-trawl sample of finfish using a commercial trawl with a small mesh liner shall be taken;

(b) in the section shallower than 550 m, two stations shall be sampled at randomly pre-selected sites according to depth and longitude for benthos using a beam-trawl once at each station only; and

(c) this will be undertaken in each pair of the open and closed strips using the process described above.

4. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR Scientific Observers Manual:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by haul catch and catch per effort by species;

(iii) haul-by haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) by-catch of fish and other organisms; and

(viii) observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 187/XVIII—Exploratory Longline Fishery for Dissostichus spp. in Statistical Division 58.4.3 Outside Areas Under National Jurisdictions in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.3 outside areas under national jurisdictions by the longline method shall be limited to the exploratory longline fishery by the European Community and France. The fishery shall be conducted by European Community (Portuguese-flagged) and French-flagged vessels using longlining only.

2. BANZARE Bank is defined as waters within Statistical Division 58.4.3 and between the latitudes 55°S and 62°S and longitudes 73°30'E and 80°E. Elan Bank is defined as waters within the latitudes 55°S and 62°S and longitudes 60°E and 73°30'E outside areas of national jurisdiction.

3. The precautionary catch limit of *Dissostichus* spp. for this exploratory longline fishery in Statistical Division 58.4.3 shall be limited to 300 tonnes on BANZARE Bank and 250 tonnes on Elan Bank. In the event that the limit on either of these banks is reached, the fishery on that bank shall be closed.

4. For the purpose of this exploratory longline fishery, the 1999/2000 fishing season is defined as the period from 1 May to 31 August 2000.

5. The exploratory longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and 182/XVIII.

6. Each vessel participating in this exploratory longline fishery will be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

Conservation Measure 188/XVIII [1]—Exploratory Longline Fishery for Dissostichus Eleginoides in Statistical Division 58.4.4 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus eleginoides* in Statistical Division 58.4.4 shall be limited to the exploratory longline fishery by Chile, the European Community, France, South Africa and Uruguay. The fishery shall be conducted by European Community (Portuguese-flagged), Chilean, French, South African and Uruguayan-flagged vessels using longlining only.

2. The precautionary catch for Statistical Division 58.4.4 shall be limited to 370 tonnes of *Dissostichus* spp. north of 60°S, to be taken by longlining. In the event that this limit is reached, the fishery shall be closed.

3. For the purpose of this exploratory longline fishery, the 1999/2000 fishing season is defined as the period from 1 May to 31 August 2000.

4. The exploratory longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and 182/XVIII.

5. Each vessel participating in this exploratory longline fishery will be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

[1] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 189/XVIII1,[1],[2] Exploratory Longline Fishery for Dissostichus Eleginoides in Statistical Subarea 58.6 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus eleginoides* in Statistical Subarea 58.6 shall be limited to the exploratory longline fishery by Chile, the European Community, France and South Africa. The fishery shall be conducted by European Community (Portuguese-flagged), Chilean, French and South African-flagged vessels using longlining only.

2. The precautionary catch limit for this exploratory fishery in Statistical Subarea 58.6 shall be limited to 450 tonnes of *Dissostichus eleginoides,* to be taken by longlining. In the event that this limit is reached, the fishery shall be closed.

3. For the purpose of this exploratory longline fishery, the 1999/2000 fishing season is defined as the period from 1 May to 31 August 2000.

4. The exploratory longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and 182/XVIII.

5. Each vessel participating in this exploratory longline fishery will be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

[1] Except for waters adjacent to the Crozet Islands.
[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 190/XVIII—Exploratory Longline Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Chile, the European Community and New Zealand. The fishery shall be conducted by European Community (Portuguese-flagged), Chilean and New Zealand-flagged vessels using longlining only.

2. The precautionary catch limit north of 65°S in Statistical Subarea 88.1 shall be limited to 175 tonnes of *Dissostichus* spp. In the event this limit is reached, the fishery north of 65°S shall be closed.

3. The precautionary catch limit south of 65°S in Statistical Subarea 88.1 shall be limited to 1 915 tonnes of *Dissostichus* spp. In the event this limit is reached, the fishery south of 65°S shall be closed. In order to ensure an adequate spread of fishing effort south of 65°S, no more than 478 tonnes of *Dissostichus* spp. shall be taken from each of the four small-scale research units (SSRU), as defined in Annex 182/B of Conservation Measure 182/XVIII, identified for Statistical Subarea 88.1 south of 65°S.

4. For the purposes of this exploratory longline fishery, the 1999/2000 fishing season is defined as the period from 1 December 1999 to 31 August 2000.

5. The directed longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with all aspects of Conservation Measures 29/XVI and 182/XVIII. However, south of 65°S the directed fishery by New Zealand, and fishing by New Zealand associated with the research plan, for the above species shall be carried out in accordance with the provisions of Conservation Measures 182/XVIII and 29/XVI, except paragraph 3 of Conservation Measure 29/XVI shall not apply. To permit experimental line-weighting trials south of 65°S, longlines may be set during daylight hours if the vessels can demonstrate a consistent minimum line sink rate of 0.3 metres per second. If a total aggregate of ten (10) seabirds is caught during daytime setting then the variation from Conservation Measure 29/XVI paragraph 3 shall cease and all vessels shall revert to setting longlines at night in accordance with Conservation Measure 29/XVI.

6. Each vessel participating in the fishery shall have at least one observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities within this fishery.

7. Each vessel participating in this exploratory longline fishery shall be

required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

8. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 191/XVIII—Exploratory Longline Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 1999/2000 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Chile and the European Community. The fishery shall be conducted by Chilean-flagged and European Community (Portuguese-flagged) vessels using longlining only.

2. The precautionary catch for this exploratory longline fishery in Statistical Subarea 88.2 shall be limited to 250 tonnes of *Dissostichus* spp. south of 65°S. In the event that this limit is reached, the fishery shall be closed.

3. For the purposes of this exploratory longline fishery, the 1999/2000 fishing season is defined as the period from 15 December 1999 to 31 August 2000.

4. The exploratory longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and 182/XVIII.

5. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XVII.

Conservation Measure 192/XVIII—Protection of the Cape Shirreff Cemp Site

1. The Commission noted that a program of long-term studies is being undertaken at Cape Shirreff and the San Telmo Islands, Livingston Island, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognising that these studies may be vulnerable to accidental or wilful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Cape Shirreff CEMP site, as defined in the Cape Shirreff management plan.

3. Members shall comply with the provisions of the Cape Shirreff CEMP site management plan, which is recorded in Annex B ''Cape Shirreff'' of Conservation Measure 18/XIII.

4. To allow Members adequate time to implement the relevant permitting procedures associated with this measure and the management plan, this Conservation Measure (192/XVIII) shall become effective as of 1 May 2000. Conservation Measure 82/XIII shall apply until midnight on 30 April 2000.

5. In accordance with Article X, the Commission shall draw this conservation measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Raymond V. Arnaudo,

Director, Office of Oceans Affairs, Department of State.

[FR Doc. 99–32891 Filed 12–17–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 3179]

Notice of Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on Monday, January 10, 2000, from 9:00 a.m. to 5:00 p.m., and on Tuesday, January 11 from 9:00 a.m. to 2:00 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW, Washington, DC. During its meeting on January 10, the Committee will continue its review of a proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador. The proposal to extend the MOU was published in the **Federal Register** on November 8, 1999. Deliberations on this proposed extension were conducted by the Committee on November 23, 1999, during which time it held an open session to receive public comment. The Committee continues to welcome written comment for its consideration. A copy of the MOU and the designated list of protected categories of archaeological material may be found at http://e.usia.gov/education/culprop.

On January 11, the Committee will begin a review and investigation of a request from the Government of the Republic of Bolivia filed under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Notification of receipt of this request appeared in the **Federal Register** on October 8, 1999, and may be found at http://e.usia.gov/education/culprop. Bolivia believes its cultural patrimony to be in jeopardy from pillage. It seeks U.S. import restrictions on Pre-Columbian archaeological material such as artifacts made of stone, metal, ceramic, shell, bone, wood, textiles, featherwork, basketry, and Pre-Columbian human remains; and Colonial period and indigenous ethnological materials such as folklore costumes, textiles, featherwork, stonework, leatherwork, woodwork, metalwork, ceramics, religious imagery, musical instruments, and paintings. The request will be reviewed by the Committee in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*).

The Committee will hold an open session to receive comment on the Bolivia request at a meeting to be scheduled in March 2000 when it will continue its review of the Bolivia request. Notification of this meeting in March will be published in the **Federal Register** and will be posted on the cultural property web site noted herein. In the meantime, the Committee welcomes written comment that addresses the determinations that must be made about the Bolivia request pursuant to 19 U.S.C. 2602, Convention on Cultural Property Implementation Act. The meeting on January 10 and 11 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW, Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

Determination To Close the Meeting of the Cultural Property Advisory Committee, January 10–11, 2000

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the meeting of the Cultural Property Advisory Committee on January 10–11, at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 99–32892 Filed 12–17–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice No. 3173]

Notice of Meetings; United States International Telecommunication Advisory Committee Telecommunication Standardization Sector (ITAC–T) National Committee, Study Groups A, B, & D

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee—Telecommunication Standardization (ITAC–T) National Committee, Study Groups A, B, & D. The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization. Except where noted, meetings will be held at the Department of State, 2201 ''C'' Street, NW, Washington, D.C.

The ITAC–T National Committee will meet from 9:30 to 4:00 on January 13 and March 14, 2000, to continue preparations for the June ITU Telecommunication Sector Advisory Group (TSAG) and the October World Telecommunication Sector Assembly (WTSA).

U.S. Study Group A will meet on February 16, 2000, to review the results of the December Study Group 3 meeting and prepare for the next Study Group 2 meeting; on March 21, 2000, to review the results of the Study Group 2 meeting, begin preparations for the next Study Group 12 meeting, and make final preparations for the next Study Group 3 meeting; and on April 18, 2000, to review the results of the Study Group 3 meeting, and make final preparations for the Study Group 12 meeting. U.S. Study Group A normally meets from 9:30 to noon.

U.S. Study Group B will meet January 6, 2000, to complete preparations for the next Study Group 4 meeting; on February 9, 2000, to review the results of the Study Group 4 meeting, begin preparations for the next Study Group 15 meeting, and final preparations for the next Study Group 13 meeting. U.S. Study Group B meets from 9:30 to 4:00.

U.S. Study Group D will meet January 18, 2000, for final preparations for the next Study Groups 8 & 16 meetings; on March 1, 2000, to review the results of the Study Groups 8 & 16 meetings, begin preparations for the next Study Group 9 meeting, and final preparations for the next Study Group 7 meeting; and on April 26, 2000, to review the results from Study Group 7, and make final preparations for the next Study Group 9 meeting. U.S. Study Group D normally meets from 9:30 to noon.

Members of the general public may attend these meetings. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC T, or U.S. Study Group A, B, or D, and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins. Actual room assignments may be determined at the lobby or by calling the Secretariat at 202 647–0965/2592.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: December 13, 1999.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 99–32890 Filed 12–17–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Weather and Winter Mobility Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation of letters of interest.

SUMMARY: This document solicits letters of interest from private sector vendors of weather information services and products for participation in development of Surface Transportation Weather Decision Support Requirements (STWDSR) relating to the legislative requirement to incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates provided in section 5207 of the Transportation Equity Act for the 21st Century (TEA–21). The FHWA's weather and winter mobility program is conducting a project to document these requirements. Firms and individuals having expertise in products or services relevant to the STWDSR document are invited to participate in stakeholder meetings and review of draft documents as a contribution to the STWDSR. Up to two outreach sessions will be held between 1/1/00 and 6/30/00 with accompanying rounds of document review.

DATES: Letters of interest from private vendors should be received by February 3, 2000.

ADDRESSES: Your letters of interest may be mailed or hand carried to the Federal Highway Administration, Office of Transportation Operations, HOTO–1, 400 Seventh Street, SW., Washington, DC 20590–0001, or submitted electronically to: *Paul.Pisano@fhwa.dot.gov* in WordPerfect 6.1 or higher.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pisano, Office of Transportation Operations, HOTO–1, (202) 366–1301, or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, (202) 366–4233, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Internet users may access the FHWA Intelligent Transportation Systems (ITS) web site at *http://www.its.dot.gov.*

Background

Section 5207(b)(5) of the TEA–21, Public Law 105–178, 112 Stat. 107, at 458 (1998), requires the FHWA to incorporate research o the impact of environmental, weather, and natural conditions on intelligent transportation systems.

The FHWA has conducted system engineering and program planning activities to define a conceptual Weather Information for Surface Transportation Decision Support

System (WIST–DSS). This system is intended to be an integrated part of the ITS, and is described in the white paper on ''Weather Information for Surface Transportation,'' May 15, 1998, available electronically at: *http://www.its.dot.gov/welcome.htm.* The document can be retrieved by logging into the Electronic Document Library as a guest (select ''EDL Login''), and then searching on the document number, which is 11263.

The STWDSR document will define weather information needs of surface transportation (especially road) users and operators, that ultimately will aid in improved decisionmaking to reduce negative impacts of weather on the roadway network. It will also define WIST–DSS requirements in response to these needs.

Creation of the STWDSR document will include defining the state-of-the-art in decision support systems involving weather and road-surface condition information, and allocating requirements to decision support system components within the ITS. Initially, the focus will be on highway winter maintenance agencies. The document also will identify future system research and operational tests to be funded by the FHWA, and will contribute to interdepartmental requirements through the Office of the Federal Coordinator for Meteorology (OFCM). Background The STWDSR plans specify participation of stakeholder groups, including nonprofit research and development organizations specializing in various aspects of meteorological system development, highway maintenance managers, and vendors of weather information systems and consulting.

The STWDSR development task is being conducted between 5/1/99 and 6/30/00 and is organized around two key deliverables:

1. STWDSR Version 1.0 delivered 11/15/99, and

2. STWDSR Version 2.0 delivered 6/30/00.

These deliverables are correlated with the OFCM program for the Weather Information for Surface Transportation Joint Action Group (WIST/JAG). The deliverables will be inputs to the OFCM requirements process, and independently will guide the FHWA program of research and development, operational tests and deployment guidance, as well as informing the weather-information elements of the National ITS Architecture. The Version 1.0 document will be a baseline for stakeholder review that will contribute to STWDSR Version 2.0.

Participation of private sector vendors of weather information services and products will contribute to: (1) Defining the state of practice in tailored weather information for surface transportation decisionmakers; (2) identifying information needs into the tailoring process, and; (3) identifying technical advances needed to enhance the quality or delivery of weather information services. No proprietary information will be required. Attendance at stakeholder meetings will be at the expense of the private sector participants. The stakeholder meetings will be for nonproprietary information exchange. Formal marketing activities, such as, booths or product sales presentations will not be accommodated. Consenting participants may be selected to give presentations or serve on discussion panels relevant to STWDSR review and development, and user education.

The following items are required in the letter of interest:

1. The organization, contact person, address, telephone number, fax number and email.

2. Brief description of the expertise and/or products relevant to STWDSR development.

3. The level of effort the respondent is willing to undertake, including:

a. Attendance at stakeholder meetings;

b. Giving presentations at stakeholder meetings;

c. Review of draft documentation; and

d. Receipt of final documentation.

Authority: 23 U.S.C. 315; Sec. 5207, Pub. L. 105–178, 112 Stat. 107, at 458 (1998); and 49 CFR 1.48.

Issued on: December 9, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–32909 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. §§ 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Massachusetts Bay Transportation Authority (MBTA) intends to transfer approximately 75,882 square feet, or 1.74 acres, of land and improvements thereon situated at Marion Drive and Copper Beech Drive in Kingston, Massachusetts.

EFFECTIVE DATE: Any Federal agency interested in acquiring the parcel of land and improvements thereon must notify the FTA Region I Office of its interest by January 19, 2000.

ADDRESSES: Interested parties should notify the Regional Office by writing to Richard H. Doyle, Regional Administrator, Federal Transit Administration, 55 Broadway, Room 921, Cambridge, MA 02142.

FOR FURTHER INFORMATION CONTACT: Margaret E. Foley, Regional Counsel, at 617/494–2409; Richard N. Cole, Director of Operations and Program Management, at 617/494–2395; or Jackie Hathaway, FTA Headquarters Office of Program Management, at 202/366–6106.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. 5334(g)(1) Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the asset further described below. Any Federal agency interested in acquiring the affected land and improvements thereon should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land and improvements thereon, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property contains approximately 75,882 square feet, or 1.74 acres, of land and improvements thereon situated at Marion Drive and Copper Beech Drive in Kingston, Massachusetts. The MBTA constructed a road and cul-de-sac across the parcel from Marion Drive to Copper Beech Drive for emergency access to Kingston Station and Layover Facility and will retain an easement in the road. The area east of the road is level and landscaped. A retention pond is located west of the road. The area west of the pond is steeply sloped up to the adjacent property. The MBTA also constructed a water main along the southwest side of the parcel.

Issued on: December 14, 1999.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 99–32914 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6632; Notice 1]

Ford Motor Co.; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) has determined that certain 2000 model year Ford Focus vehicles it produced are not in full compliance with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, ''Light Vehicle Brake Systems,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.4.3(b) of FMVSS No. 135 states that the brake fluid warning statement lettering shall be ''located so as to be visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap.'' Ford manufactured approximately 11,000 model year 2000 Focus vehicles that may not comply with the requirement that the brake fluid label be located within 100 mm of the reservoir filler plug or cap. The vehicles were manufactured between October 7, 1999 and October 20, 1999. According to Ford, the location of the labels containing the required lettering was not controlled and, while clearly visible by direct view, some labels were located such that the lettering is 120 to 130 mm distance from the reservoir filler cap. Ford believes this condition to be inconsequential as it relates to motor vehicle safety.

Ford stated in its Petition that the noncompliance was precipitated by a production change. Prior to the production change, the labels were affixed by Ford during vehicle assembly. The production change resulted in the brake fluid warning labels being affixed by the supplier of the vehicle component on which the labels are mounted. The supplier was not aware of the importance of the positioning of the brake fluid warning label on the vehicle component.

Ford's petition included a brake fluid warning label of the type affixed to the 2000 model year Focus. Ford also provided photographs of an engine compartment in which the label is properly located (approximately 75 mm from the brake fluid reservoir cap) and an engine compartment with an improperly located label. Ford supported its claim that the noncompliance is inconsequential by stating that the subject labels meet all other federal requirements, and the location of these labels does not present reasonably anticipated risks to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 19, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 14, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–32857 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–6354]

Controlled Substances and Alcohol Use and Testing; PacifiCorp Electric Operations' Exemption Application; Random Testing of Drivers

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of application for exemption and proposal to deny exemption; request for comments.

SUMMARY: The OMCS is announcing its proposal to deny the application of PacifiCorp Electric Operations (PacifiCorp) for an exemption from the OMCS' controlled substances and alcohol random testing requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). PacifiCorp has requested an exemption because the company believes it has a low percentage of positive random test results since testing was initiated. PacifiCorp's positive rate for random controlled substances tests is 1 percent and its positive rate for random alcohol tests is 0.8 percent. The company requested regulatory relief but did not offer alternatives that would have comparable deterrent effects. The OMCS intends to deny the exemption because PacifiCorp did not explain how it would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the random controlled substances and alcohol testing requirements.

DATES: Comments must be received on or before January 19, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009, Office of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to this notice by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act ''to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration'' (Pub. L. 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier and Highway Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary.

Section 4007 of the TEA–21 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process them.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of Title 49 of the Code of Federal Regulations to reflect the organizational changes.

PacifiCorp's Application for an Exemption

PacifiCorp applied for an exemption from 49 CFR 382.305, which provides requirements concerning random controlled substances and alcohol testing of commercial motor vehicle drivers. A copy of the application is in the docket identified at the beginning of this notice. PacifiCorp indicated that it is an electric utility with 133 service centers and other facilities in six States. Approximately 1,600 drivers would be affected if the exemption were granted. PacifiCorp stated:

> PacifiCorp does not anticipate any adverse safety impacts from this exemption due to the current low level of positive random results and the company's intention to continue its for-cause, pre-employment and return-to-work drug and alcohol screening programs.
>
> The current program that chooses the company's Commercial Drivers License holders for random screens operates at an annual 50 percent sampling for drugs and a 10 percent sampling for alcohol. This program has an adverse effect on the productivity of PacifiCorp's employees in both union and supervisory ranks. Administering and arranging each random screen can take up to two supervisory hours and three to four non-supervisory hours out of an eight-hour workday. This impact is becoming more critical as the electric utility enters a new era of competition.
>
> The approximately $150,000 spent each year on random drug and alcohol screens takes funds away from innovative traffic safety programs that PacifiCorp could develop. This amount does not include the aforementioned cost of lost productivity, which could easily double this figure.

Basis for Proposal to Deny the Exemption

The OMCS has carefully reviewed PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements of 49 CFR 382.305, but does not believe that a motor carrier's low positive testing rate is, in and of

itself, sufficient reason for the carrier to be granted an exemption from the random testing regulations. Random testing identifies drivers who use controlled substances or misuse alcohol but are able to use the predictability of other testing methods (e.g., pre-employment, and reasonable suspicion) to avoid testing positive. More importantly, random testing serves as a deterrent against beginning or continuing prohibited controlled substances use and misuse of alcohol.

Generally, the controlled substances and alcohol testing requirements are applicable to every person who operates a CMV (as defined in 49 CFR 382.107) in commerce in any State and is subject to the commercial driver's license (CDL) requirements (49 CFR part 383). The rules are also applicable to each employer [1] of these individuals. The regulations require pre-employment controlled substances testing, and post-accident, random, reasonable suspicion, return-to-duty (for drivers removed from duty after a positive test result), and follow-up testing for controlled substances and alcohol.

The selection of drivers for random alcohol and controlled substances testing must be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver must have an equal chance of being tested each time selections are made. The employer must randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing, currently 10 and 50 percent, respectively.

Although PacifiCorp indicated that its positive testing rates for controlled substances and alcohol are 1 percent and 0.8 percent, respectively, these rates are indications that its workplace is not presently drug-free and that random testing still serves a very necessary purpose. Since PacifiCorp appears to have an annual average of 1,600 drivers, the company is required to conduct at least 800 random controlled substances tests, and 160 random alcohol tests during each calendar year. A positive testing rate of 1 percent for controlled substances means that out of the 800 random tests conducted, eight individuals were found to have violated the prohibition on the use of controlled substances. A positive testing rate of 0.8 percent for alcohol means that out of the 160 random tests conducted, two individuals were found, at a minimum, to have violated the prohibition against reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater (49 CFR 382.201). These two individuals may also have violated the prohibitions against using alcohol while performing safety-sensitive functions (49 CFR 382.205), and using alcohol within four hours of performing safety-sensitive functions (49 CFR 382.207).

While PacifiCorp's positive test rates are low, some of its drivers were not deterred from using controlled substances, and misusing alcohol. PacifiCorp said that it did ''not anticipate any adverse safety impacts from this exemption.'' Even if the effect of ending random testing were nil—which is unlikely—the projection into the future of PacifiCorp's current positive test rates means that at least 80 of its drivers would operate CMVs on the public highways in the next decade with controlled substances, and another 20 with substantial amounts of alcohol, in their bodies. This is not reassuring.

Furthermore, PacifiCorp did not indicate whether drivers who tested positive were terminated, or returned to duty. If they returned to duty, what was their subsequent record of compliance? The agency believes this information is relevant.

Discontinuing random controlled substances and alcohol testing would send a message that as long as CMV drivers are not involved in serious accidents and do nothing that would prompt an employer to conduct a reasonable suspicion test, there is no real obstacle to recreational use of controlled substances or the abuse of alcohol.

The current post-accident and reasonable suspicion testing requirements would remain in effect even if PacifiCorp's request were granted, but the OMCS does not consider them effective deterrents without the complementary random testing requirement. In the case of post-accident testing, the damage has already been done before a test is conducted. For reasonable suspicion testing, indicators that the driver may have a problem have already become apparent to a trained observer. Random testing however, provides a means to detect driver problems in the absence of an accident or reasonable-suspicion indicators. An effective controlled substances and alcohol program must have all three of these elements to deter the prohibited conduct, and, if deterrence fails, to detect such conduct by drivers. Even with all three of these elements, some drivers engage in prohibited conduct, as evidenced by PacifiCorp's own data. It is extremely unlikely that discontinuing the random testing portion of the program will allow PacifiCorp to achieve the same level of safety currently achieved through a program that includes all the required elements.

Although PacifiCorp argues that the money spent each year on random drug and alcohol testing takes funds away from innovative traffic safety programs that the company could develop, it gave no specific examples of safety programs that would have been conducted. The agency does not intend to accept such claims at face value.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption application from PacifiCorp. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may make its decision at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 14, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–32912 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–22–P

[1] Employer means any person (including the United States, a State, District of Columbia, tribal government, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–5867]

Parts and Accessories Necessary for Safe Operation; Ford Motor Company's Exemption Applications; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The OMCS is granting the applications of the Ford Motor Company (Ford) for exemptions from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the OMCS' requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The OMCS believes the terms and conditions of the exemptions achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations. The exemptions preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on December 20, 1999. The exemptions expire on December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Safety, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to the previous notice concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act ''to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration'' (Public Law 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier and Highway Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107). Section 4007 of TEA–21, entitled ''Waivers, Exemptions, and Pilot Programs,'' amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be up to two years in duration, and may be renewed.

Section 4007 of the TEA–21 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures to be followed to request waivers and apply for exemptions from the FMCSRs, and the procedures used to process them.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of Title 49 of the Code of Federal Regulations to reflect the organizational changes.

Ford's Applications for Exemptions

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the FHWA published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency.

Discussion of Comments to the Notice of Intent to Grant the Exemptions

The FHWA received, and the OMCS has reviewed, comments from Collins

Industries, Inc., El Dorado National, General Motors Corporation (GM), and the National Truck Equipment Association (NTEA). All of the commenters agreed with the preliminary decision to grant exemptions for motor carriers operating certain vehicles manufactured by Ford. Collins Industries stated:

> As a body builder of school buses and commercial buses it has been our [experience] that Ford's internal design standards lead the industry in the safety and function. If Ford feels that 17 [gallons per minute] is the fastest fill rate to be used on their fuel tanks then I support that decision. I see how higher fill rates may cause safety issues from excess fuel spillage but can see no reason that slowing fill rates can compromise safety.
>
> We would prefer to use the fuel tank as supplied by Ford. The labeling requirements of 393.67 are issues to be addressed by tank manufacturers that supply tanks to general applications. Ford designs its tanks to fit specific spatial constraints in its vehicles. No increase in safety beyond Ford's internal design constraints is required.

El Dorado National believes the rate at which a fuel tank may be filled has no bearing on the safe operation of the vehicle, or safety during the refueling process. El Dorado National stated that ''[t]he tanks in question will accept fuel at a rate that the typical commercial unleaded fuel pumps deliver * * *.''

On the subject of labeling of fuel tanks, El Dorado National indicated that ''[s]ince these vehicle tanks are tested, certified, and mass produced it does not seem relevant to label each tank.'' El Dorado National believes the absence of a certification label would not compromise safety.

The NTEA indicated that it is not aware of any safety-related problems that have or would occur as a result of the current fuel system design on the Ford vehicles in question.

General Motors Corporation supports granting exemptions from the fuel tank fill rate, and certification labeling requirements for motor carriers operating certain vehicles manufactured by Ford. GM indicated that its G and C/K vehicles also have fuel tanks that do not meet the OMCS' requirements concerning the fill rate, marking and certification labeling. GM's comments included a request for an exemption to these requirements for motor carriers operating certain GM-manufactured vehicles. As part of the justification for an exemption for its vehicles, GM argued that the use of automatic shut-off valves on fuel dispensing pumps makes it unlikely that significant amounts of fuel will be spilled in the event that a vehicle is fueled at a fill rate exceeding the fuel system's capacity. The OMCS will publish a separate notice at a later date requesting public comment on GM's application for an exemption.

OMCS Decision

The OMCS has considered all the comments received in response to the August 10 notice of intent and has decided to grant the exemptions.

Exemption from § 393.67(c)(7)(ii)

The OMCS has reviewed its fill pipe design requirements and has concluded that the fill-pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the Environmental Protection Agency's (EPA) regulations [1] concerning gasoline fuel pumps. While the OMCS requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the OMCS does not believe this will present a safety problem because the fill pipe design used by Ford is capable of receiving fuel at a rate of 17 gallons per minute. The 17-gallon-per-minute rate is only 15 percent less than the requirement in § 393.65. Accordingly, the agency concludes that the 17-gallon-per-minute rate will achieve a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

The OMCS agrees with GM's comments concerning the use of automatic shut-off valves on fuel dispensing pumps. The use of such technology minimizes the risk that a significant amount of fuel will be spilled even in the event that one of the vehicles in question is refueled using a pump exempt from the EPA requirement.

The OMCS also reviewed available information on the origin of the fill-pipe rule. The 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice ''Side Mounted Gasoline Tanks'' as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, ''Fuel Systems,'' an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 ''Fuel Systems—Truck and Truck Tractors.'' The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The OMCS does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, ''[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue.''

The OMCS believes the current requirement may need to be reconsidered in light of the EPA requirements. While the OMCS reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. Therefore, the agency is exempting interstate motor carriers operating Ford Econoline vehicles from § 393.67(c)(7)(ii).

Exemption from §§ 393.67(f)(2) and (f)(3)(ii)

With regard to the exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the OMCS agrees with the arguments presented in Ford's application, and the comments from GM and El Dorado National that there is no readily apparent adverse impact on safety associated with the absence of the required markings. However, the agency continues to believe marking and certification are important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the OMCS'

[1] The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

requirements and those that are not. For cases in which the fuel tank is manufactured and installed by the vehicle manufacturer, and maintained by the motor carrier, there appears to be little need for marking and certification. The need would typically be greatest for replacement or aftermarket fuel tanks manufactured by an entity other than the original equipment manufacturer. Since there is no practicable means for motor carriers and enforcement officials to make a distinction between original and aftermarket fuel tanks, marking and certifications are necessary.

The OMCS does not believe the operators of the Ford Econoline vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67. Accordingly, the agency is exempting interstate motor carriers from §§ 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

Terms and Conditions for the Exemption

The OMCS is providing exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemptions are effective upon publication pursuant to 5 U.S.C. 553(d)(1) and are valid until December 20, 2001, unless revoked earlier by the OMCS. Ford, or any of the affected motor carriers, may apply to the OMCS for a renewal of the exemption. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, and F7UA–9002D* where the asterisk (*) represents a ''wild card'' character (any character of the alphabet).

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 14, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–32911 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–6285]

Parts and Accessories Necessary for Safe Operation; General Motors Corporation's Exemption Application; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of application for exemption and proposal to grant exemption; request for comments.

SUMMARY: The OMCS is announcing its proposal to grant the application of the General Motors Corporation (GM) for an exemption from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption would enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by GM, and equipped with fuel tanks that do not meet the OMCS' requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The OMCS believes the terms and conditions of the exemptions being considered achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations and requests public comment on GM's application. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before January 19, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009, Office of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act ''to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration'' (Pub. L. 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division

(i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier and Highway Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107). Section 4007 of the TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be up to two years in duration, and may be renewed.

Section 4007 of the TEA–21 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of the TEA–21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures to be followed to request waivers and apply for exemptions from the FMCSRs, and the procedures that will be used to process them.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of Title 49 of the Code of Federal Regulations to reflect the organizational changes.

GM's Application for an Exemption

GM applied for an exemption from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively. GM's application for an exemption was included in its response to the notice of intent to grant similar exemptions to the Ford Motor Company on behalf of motor carriers operating certain vehicles manufactured by Ford (64 FR 43417; August 10, 1999). A copy of GM's application is included in the docket referenced at the beginning of this notice. GM indicated that it ''fully supports the FHWA's preliminary determination to grant an exemption from the requirements of [§§] 393.67(c)(7)(ii), 393.67(f)(2) and 393.67(f)(3)(ii) to [the] Ford Motor Company'' and requested the exemption on behalf of motor carriers operating certain vehicles manufactured by GM.

GM produces G-vans (Chevrolet Express and GMC Savanna) and full-size C/K trucks (Chevrolet Silverado and GMC Sierra) which may be equipped for numerous uses, including use as a CMV as defined in 49 CFR 390.5. GM argues that exemptions are needed for the same reasons described in the Ford Motor Company's applications. GM stated:

The basis for GM's exemption petition follows:

1. GM agrees with Ford that it is not possible to accurately estimate the number of these vehicles that will be used as CMVs.

2. GM's G and C/K vehicles, as is the Ford Econoline, are equipped with fuel tanks mounted between the frame rails, use a fill pipe system conforming to EPA fill requirements, and are designed for conformance to [Federal Motor Vehicle Safety Standard (FMVSS) No. 301] performance requirements. Although the vehicles over 10,000 pounds GVWR are not required to meet FMVSS 301, the fill system on these vehicles is based on the design for vehicles conforming to FMVSS 301.

3. GM does not authorize or support the practice of retrofitting fuel tanks and/or fill systems that would be necessary to comply with the fuel fill and labeling requirements of [§ 393. 67]. We are concerned, as is Ford, that such modifications could undermine the fuel system integrity resulting in a decrease in the safety of the vehicle.

4. GM agrees with Ford that the 20 gallon per minute fill requirement is a matter of convenience and further suggests that its applicability should be restricted to vehicles equipped with side mounted fuel tanks. These vehicles have fill openings directly on the fuel tank and are of a type that are likely to be fueled at a location where the fuel fill rate exceeds 10 gallons per minute.

5. With industry-standard automatic shut-off nozzles at fuel stations, it is unlikely that significant fuel will be spilled in the event that a vehicle is fueled at a fill rate exceeding the fuel system's capacity.

6. GM agrees that the marking requirements of § 393.67(f)(2) and (f)(3)(ii) are only identification requirements and do not contribute to the safety of the fuel tank. Additionally, the design of GM's G and C/K fuel tanks makes it difficult to see any such identification on a completed vehicle.

Basis for Proposal to Grant Exemption

The OMCS has reviewed its fill pipe design requirements. The agency concludes that the fill-pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the U.S. Environmental Protection Agency's (EPA) regulations concerning gasoline fuel pumps. While the OMCS requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the OMCS does not believe this would present a safety problem. The OMCS agrees with GM's argument that the use of automatic shut-off valves on fuel dispensing pumps make it unlikely that a significant amount of fuel will be spilled if a vehicle is refueled using a pump that exceeds the vehicle's capacity for receiving fuel. The agency believes the combination of the

EPA regulation concerning dispensing pumps, and the use of automatic shut-off nozzles on these pumps ensures a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

The OMCS believes any operational problems experienced by motor carriers using certain fuel pumps to refill GM vehicles have already been resolved. The vehicles in questions have been in use for a number of years and are still being produced. Therefore, motor carriers using these vehicles have experience refueling them. The OMCS is not aware of any safety problems associated with the fill-pipe capacity for the fuel tanks on GM G and C/K vehicles. The agency requests comments on this issue.

The OMCS also reviewed available information on the origin of the fill-pipe rule. The 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice ''Side Mounted Gasoline Tanks'' as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, ''Fuel Systems,'' an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 ''Fuel Systems—Truck and Truck Tractors.'' The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The OMCS does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, ''[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue.''

The OMCS believes the current requirement may need to be reconsidered in light of the EPA requirements. While the agency reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. The agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating certain GM vehicles and requests public comment on GM's application.

With regard to an exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the OMCS does not believe there would be a readily apparent adverse impact on safety associated with the absence of the required markings. Although the OMCS considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the agency's requirements and those that are not, the OMCS does not believe the operators of the GM vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

As a vehicle manufacturer, GM is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. GM is less familiar with the equipment requirements of the OMCS, the agency responsible for regulating motor carriers.

GM has indicated that its tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because GM cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow approximately 10 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The OMCS would provide an exemption to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating certain GM vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the OMCS. GM, or any of the affected motor carriers, may apply to the OMCS for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain ''J'' or ''K'' in the fourth position and a ''1'' in the seventh position. The OMCS believes this information is sufficient and requests public comment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption applications from GM. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may grant the exemptions at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 14, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–32913 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 90)] [1]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (Buffalo Rate Study)

AGENCY: Surface Transportation Board, DOT.

[1] A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388.

ACTION: Decision No. 1; Notice of Buffalo Rate Study Proceeding and Request for Comments

SUMMARY: In 1998, the Board approved, subject to certain conditions: (1) The acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS. One of the conditions imposed called for a 3-year study of rail rates in the State of New York's Buffalo area (the Buffalo Rate Study or the Study) following the division of Conrail's assets, which occurred on June 1, 1999. Through this decision, we are initiating our Buffalo Rate Study to examine linehaul and switching rates for rail movements into and out of the Buffalo area. We are requiring certain information to be submitted by CSX and NS, and are requesting public comments to develop a more complete record. We are also setting the timetable for the submission of additional information and comments as the Study progresses.

DATES: For the initial 6-month review, the carriers' rail 100% waybill files for the period beginning June 1, 1997, and ending November 30, 1999, should be made available to all interested parties and to Board staff by December 30, 1999. CSX and NS comprehensive filings are due by January 14, 2000; comments from other parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

For the first full-year review, the carriers' rail 100% waybill files for the period ending May 31, 2000, should be made available to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from all interested parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 90) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33388 (Sub-No. 90), 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of all documents in this proceeding must be sent to each representative: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004–1202; and (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006–3939.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all pleadings and attachments (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and clearly label pleadings and attachments and corresponding computer diskettes with an identification acronym and pleading number. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Parties may individually seek a waiver from the disk-CD requirement. The computer data contained on the computer diskettes and CDs submitted will be subject to the protective order discussed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Redisch, (202) 565-1544. [TDD for the hearing impaired: (202) 565–1695.]

Background

In Decision No. 89, served on July 23, 1998, in STB Finance Docket No. 33388 (*Conrail*), we approved, subject to certain conditions, the acquisition of control of Conrail by CSX and NS and the division of the assets of Conrail by and between CSX and NS. That division occurred on June 1, 1999. Prior to this, rail service in the Buffalo area[2] was dominated by Conrail. The Greater Buffalo interests were particularly critical of Conrail's pre-transaction market power in the area.

We determined that, while the method we approved for the division of Conrail's Buffalo-area assets—with the largest share going to CSX—would not create direct two-railroad service for all shippers in the Buffalo area, it would improve local competition significantly.[3]

As a precautionary measure, we also imposed a condition that called for a 3-year study of rail rates in the Buffalo area following the division of Conrail's assets and the integration of those assets into CSX and NS, which occurred on June 1, 1999. We will begin our Buffalo Rate Study with an initial review of the first 6 months (June 1, 1999, through November 30, 1999), which will be followed by a review of the first year (June 1, 1999, through May 31, 2000).

Comments and Information Requested

In this initial stage of the Buffalo Rate Study, we will require that CSX and NS file information sufficient for us to determine that they are in compliance with all the conditions related to switching that we have imposed in the Buffalo area.[4] We will also require CSX and NS to submit information sufficient for us to determine the trend in rates for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, which is before the parties submitted the Conrail application subsequently approved by us, until November 30, 1999. And we will require that CSX and NS make available to interested parties and to Board staff the Conrail, CSX, and NS rail 100% waybill files for rail movements into and out of the Buffalo area (subject to the protective order discussed below) for the period of June 1, 1997, through November 30, 1999, so that we may obtain an independent determination of

[2] The Erie-Niagara Rail Steering Committee (ENRSC), an ad hoc committee representing businesses located in the New York State counties of Erie and Niagara, and in those parts of Chautauqua County that lie north or east of CP 58 near Westfield, referred to this area as the Niagara Frontier region. We will use this term, as well as the Greater Buffalo area or the Buffalo area, interchangeably. *See Conrail*, Decision No. 89, slip op. at 305–06, n.505.

[3] We found that the transaction would result in a much stronger ''second railroad'' presence in the Buffalo area than had been the case previously, especially given the enhancements we imposed. For example, in a settlement reached with the National Industrial Transportation League (NITL), CSX and NS agreed to mitigate the market power they would otherwise inherit from Conrail at exclusively served points where Conrail performed switching services, and we expanded those terms in approving the transaction and imposed that agreement as expanded and other settlement agreements pertaining to the Buffalo area, as discussed below, including certain representations made by CSX beneficial to that area.

[4] Conrail's switching fees had been $450 within its Buffalo switching district and $390 at other points in the Niagara frontier area. The NITL agreement retains switching for 10 years by CSX and NS for all facilities that received switching by Conrail to either of those carriers, and at an inflation-adjusted fee no higher than $250 for the first 5 years. We extended the switching component of the NITL agreement to situations where shortlines paid switching charges to Conrail and where Conrail received switching services from NS or CSX (*Conrail*, Decision No. 89, slip op. at 57). We also extended the NITL agreement to certain international rail movements into and out of Niagara Falls (*id.*, slip op. at 86–87).

While the NITL agreement covered only post-integration switching by CSX for NS and NS for CSX, CSX explained that it had also negotiated voluntary agreements with both Canadian National Railway Company and its affiliates (collectively, CN) and Canadian Pacific Railway Company and its affiliates (collectively, CP) that provide lower switching fees for enlarged volumes than formerly available to CN and CP from Conrail in the Greater Buffalo area. In addition, the agreements provide increased access to CN and CP for cross-border truck competitive traffic. We imposed these CN and CP settlements as conditions to our approval of the transaction.

the trends in rail rates into and out of the Buffalo area during this period.[5] Comprehensive filings addressing the matters discussed above are due from CSX and NS by January 14, 2000.

We are also requesting comments from shippers and their representatives, from other railroads serving the Buffalo area, and from other interested parties, seeking their views and evidence concerning trends in Buffalo-area rail rates and information to help us determine if local businesses and other railroads have available the switching rates to which they are entitled. Comments from all interested parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

Later next year, consistent with the June 1, 1999 division date, we will rebase this Buffalo Rate Study on a fiscal year ending May 31st of each year. Updates of the carriers' rail 100% waybill files for rail movements into and out of the Buffalo area for the period ending May 31, 2000, should be made available, subject to the protective order discussed below, to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from other parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

Protective Order. Parties may submit filings (including waybill data and computer data), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the Protective Order entered in STB Finance Docket No. 33388 in Decision No. 1 (served April 16, 1997), as modified in various respects in Decision No. 4 (served May 2, 1997), Decision No. 15 (served August 1, 1997), Decision No. 22 (served August 21, 1997), Decision No. 46 (served October 17, 1997), and Decision No. 87 (served June 11, 1998). Waybill files being made available to interested parties shall be subject to this Protective Order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388. This decision will serve as a notice that persons who were parties of record in STB Finance Docket No. 33388 will not automatically be placed on the service list as parties of record for this Buffalo Rate Study proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 90) service list and receiving copies of CSX and NS filings relating to the Buffalo Rate Study must send us written notification with copies to the railroads' representatives.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: December 10, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32902 Filed 12–17–99; 8:45 am]

BILLING CODE 4915–00–P

[5] Our understanding is that information contained in the rail 100% waybill files for the period ending November 30, 1999, should be available by December 30, 1999. Proper documentation for these files, including a way to translate from Conrail's (old) freight station codes to CSX's and NS' (new) freight station codes, should also be made available at that time. Further, to facilitate the continued use of waybill data in this proceeding, CSX and NS should be prepared to provide updates to their original waybill submissions on a quarterly basis.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33829]

Green Mountain Railroad Corporation—Acquisition and Operation Exemption—Certain Rights of Boston and Maine Corporation

Green Mountain Railroad Corporation (GMRC), a Class III common carrier by rail, has filed a verified notice of exemption under 49 CFR 1150, Subpart D—*Exempt Transactions,* to acquire from Boston and Maine Corporation (B&M) an exclusive freight railroad operations easement (Freight Easement) over a line of railroad extending between approximately milepost 123 in White River Junction, VT, and approximately milepost 163 in Wells River, VT, a total distance of approximately 40 rail miles, in Windsor and Orange Counties, VT (Subject Line).

This transaction is related to a concurrently filed verified notice of exemption filed in STB Finance Docket No. 33830, *State of Vermont—Acquisition Exemption—Certain Assets of Boston and Maine Corporation and Springfield Terminal Railway Company.*[1]

Pursuant to a Purchase and Sale Agreement to be entered into by and between Vermont, B&M, and Springfield Terminal Railway Company (STR), Vermont will acquire B&M's right, title, and ownership interest, and STR's leasehold interest, in the right-of-way, trackage, and other physical assets associated with the Subject Line. GMRC will acquire the freight operating easement retained by B&M and provide freight service over the Subject Line.

Consummation of this transaction is expected to occur on or after December 10, 1999, the effective date of the exemption.

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33829, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew P. Goldstein, McCarthy Sweeney & Harkaway PC, 1750 Pennsylvania Avenue NW, Suite 1105, Washington, DC 20006.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 10, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32901 Filed 12–17–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The State of Vermont (Vermont) simultaneously filed a motion to dismiss the notice of exemption. The Board will address the jurisdictional issue raised by the motion to dismiss in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33821]

Union Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) from Joliet, IL (milepost 1.8), through West Chicago, IL (milepost 29), to the end of EJ&E's ownership at Waukegan, IL (milepost 75), a distance of approximately 76 miles.[1]

[1] A redacted version of the trackage rights agreement between EJ&E and UP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order [which was granted in a decision served December 14, 1999.]

The transaction could have been consummated on or after December 7, 1999,[2] the effective date of the exemption.

The purpose of the trackage rights is to permit UP to improve operation of its trains and expedite interchange of traffic with UP's connecting railroads in the Chicago area by permitting UP to use the EJ&E trackage for some of its traffic to avoid routes through the Chicago gateway.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease & Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33821, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 14, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32900 Filed 12–17–99; 8:45 am]

BILLING CODE 4915–00–P

[2] Pursuant to 49 CFR 1180.4(g), a railroad must file a verified notice with the Board at least 7 days before the trackage rights are to be consummated. In its verified notice, UP indicated a proposed consummation date of ''as soon as possible after December 1, 1999.'' Because the verified notice was filed on November 30, 1999, however, consummation could not have taken place prior to December 7, 1999. UP's representative has been contacted and has confirmed that consummation would not take place before December 7, 1999.

On December 3, 1999, the City of West Chicago and Joseph Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board, filed petitions to stay the scheduled effective date of the subject trackage rights. By decision served December 6, 1999, the petitions for stay were denied.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33830]

State of Vermont—Acquisition Exemption—Certain Assets of Boston and Maine Corporation

The State of Vermont (Vermont), acting through its Agency of Transportation, has filed a verified notice of exemption under 49 CFR 1150, Subpart D—*Exempt Transactions,* to acquire from Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (STR) certain assets of a line of railroad extending between approximately milepost 123 in White River Junction, VT, and approximately milepost 163 in Wells River, VT, a total distance of approximately 40 rail miles, in Windsor and Orange Counties, VT (Subject Line).[1]

Pursuant to a Purchase and Sale Agreement to be entered into by and between Vermont, B&M, and STR, Vermont will acquire B&M's right, title, and ownership interest, and STR's leasehold interest, in the right-of-way, trackage, and other physical assets associated with the Subject Line.

[1] Vermont simultaneously filed a motion to dismiss this notice of exemption. The Board will address the jurisdictional issue raised by the motion to dismiss in a separate decision.

Vermont will not acquire the right or obligation to conduct any freight rail operations on the Subject Line. B&M has retained the exclusive freight operating easement. This transaction is related to a concurrently filed verified notice of exemption filed in STB Finance Docket No. 33829, *Green Mountain Railroad Corporation—Acquisition and Operation Exemption—Certain Rights of Boston and Maine Corporation*, wherein Green Mountain Railroad Corporation proposes to acquire the freight operating easement to be retained by B&M and provide freight service over the Subject Line.

Consummation of this transaction is expected to occur on or after December 10, 1999, the effective date of the exemption.

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33830, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 10, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32903 Filed 12–17–99; 8:45 am]

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Monday
December 20, 1999

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Comprehensive Program Plan for Fiscal Year 2000; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1252f]

RIN No. 1121–ZB86

Comprehensive Program Plan for Fiscal Year 2000

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Final Program Plan for fiscal year 2000.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Final Program Plan for fiscal year (FY) 2000.

FOR FURTHER INFORMATION CONTACT: Eileen M. Garry, Director, Information Dissemination Unit, at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5601 *et seq.* (JJDP Act), the Administrator of OJJDP published for public comment a Proposed Comprehensive Plan describing the program activities that OJJDP proposed to carry out during fiscal year (FY) 2000 under Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. The public was invited to comment on the Proposed Plan (published on October 15, 1999, at 64 FR 56084) by November 29, 1999. The OJJDP Administrator analyzed the public comments received, and the comments and OJJDP's responses are provided below. The Administrator took these comments into consideration in developing this Final Comprehensive Plan describing the particular program activities that OJJDP intends to fund during FY 2000, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

OJJDP acknowledged in the Proposed Plan that at the time of publication its reauthorization legislation was still in conference and its FY 2000 appropriation was not yet final. OJJDP indicated that, depending on the outcome of those legislative actions, it might alter how its programs are structured and make any necessary modifications in the Final Plan following the public comment period. This Final Plan is consistent with OJJDP's FY 2000 appropriation and reflects its response to the public comments on the Proposed Plan.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Comprehensive Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Background

In developing its program plan for Parts C and D each year, OJJDP takes into consideration the latest available data on juvenile crime and victimization in the United States and views these statistics in relation to those of recent years. To know where the Nation's juveniles are headed, it is necessary to know where they are and where they have been. OJJDP has two primary source materials that provide a comprehensive picture of the nature of juvenile crime and violence across the Nation: *Juvenile Offenders and Victims: 1999 National Report* (National Report) which assembles the latest data available on juvenile crime, victimization, and risk behavior; and *Juvenile Arrests 1998,* an OJJDP Bulletin that highlights just-released data from the Federal Bureau of Investigation regarding juvenile arrests and violence. [1]

At the end of the 1990's, juvenile crime and violence are continuing a downward trend that began in 1994, bringing a halt to the dramatic annual increases that had alarmed the Nation since 1988. *Juvenile Arrests 1998* indicates that for the fourth consecutive year, the total number of juvenile arrests for violent crimes—murder, forcible rape, robbery and aggravated assault—declined (p. 1). Specifically, serious violence by juveniles dropped 19 percent between 1994 and 1998, compared with a reduction of 6 percent in violence by adults in the same period (*Juvenile Arrests,* p.1). Between 1993 and 1998, juvenile arrests for murder declined about half, with the number of arrests in 1998 (2,100) about 15 percent above the 1987 level (*Juvenile Arrests,* p. 1). Despite well-publicized instances of shocking school violence, students are safer at school than elsewhere, and school crime declined from 1993 through 1996 (National Report, p. 31).

On the other hand, gang problems now affect more jurisdictions than ever before—including rural and suburban areas (p. 77). Illicit drug use by juveniles, which had declined during the 1980's, has increased since 1992 (p. 74), although the National Household Survey on Drug Abuse reported that the percentage of 12- to 17-year-olds who reported using illegal drugs in the preceding month dropped from 11.4 percent in 1997 to 9.9 percent in 1998. Looking at arrest data, while drug arrests continued to increase for both juveniles and adults between 1993 and 1997, arrests for most serious violent offenses and property offenses declined—with violent crime arrests down 6 percent for juveniles and property crime arrests down 3 percent (p. 117). In 1997, the juvenile violent crime arrest rate, which had increased 62 percent from 1988 to 1994, was at its lowest level in this decade: just 7 percent above the 1989 rate, but still 25 percent above the 1988 rate (p. 120).

Even in the area of violent behaviors that do not reach the attention of the justice system, positive trends are seen. A recent Centers for Disease Control and Prevention (CDC) biennial survey of 16,000 9th through 12th graders found sharp decreases in certain categories of violent activity by teenagers between 1991 and 1997. For example, 18.3 percent of the students surveyed in 1997 reported having carried a gun, knife, or club in the previous month, compared with 26.1 percent of those surveyed in 1991, and the percentage carrying such weapons on school property decreased from 11.8 percent in 1993 to 8.5 percent in 1997. The frequency of fighting also declined, with 37 percent of the 1997 surveyed youth reporting involvement in a physical fight in the previous year, compared with nearly 43 percent of those surveyed in 1991.

This mixture of some reassuring and some still troubling statistics serves as a reminder that while great progress has been made in reducing juvenile delinquency, violence, and victimization, much more needs to be done. Although it is impossible to definitively identify the reasons for the downward trend in juvenile violence, factors cited by the authors of the CDC study include community policing and an expansion of violence prevention programs. As research and evaluation, much of it supported by OJJDP funding, continue to provide information about what works in the areas of prevention and intervention, policymakers, practitioners, and citizens can make informed decisions as to what programs and approaches will best serve to reinforce and continue existing trends away from juvenile delinquency, violence, and victimization.

In this Final Comprehensive Plan, OJJDP describes its funding activities

[1] Copies of the National Report or *Juvenile Arrests 1998* can be obtained by calling OJJDP's Juvenile Justice Clearinghouse at 800–638–8736 or by visiting OJJDP's Web site at www.ojjdp.ncjrs.org and clicking on ''Publications.''

authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act. The activities authorized under Parts C and D constitute part, but not all, of OJJDP's overall responsibilities, which are outlined briefly below.

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these and other programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services.

Under Part C of Title II of the JJDP Act, OJJDP funds Special Emphasis programs and—through its National Institute for Juvenile Justice and Delinquency Prevention—numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities. OJJDP funds school and community-based gang prevention, intervention, and suppression programs under Part D and mentoring programs under Part G of Title II of the JJDP Act. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention through the Concentration of Federal Efforts Program and serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention; both of these activities are authorized in Part A of Title II of the JJDP Act. Another OJJDP responsibility under the JJDP Act is to administer the Title IV Missing and Exploited Children's Program.

Other programs administered by OJJDP include the Drug Prevention Program, the Enforcing Underage Drinking Laws Program, the Safe Schools Initiative, the Tribal Youth Program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. OJJDP also administers programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

OJJDP focuses its assistance funding and support activities on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State and local governments, American Indian and Alaska Native jurisdictions, and public and private agencies and organizations. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include collecting data and statistics to determine the extent and nature of issues affecting juveniles; funding research and studies that can lead to demonstrations funded by discretionary grants; evaluating demonstration projects; sharing lessons learned from the field with practitioners through a range of information dissemination vehicles; providing seed money to States and local governments through formula and block grants to implement programs, projects, or reform efforts; and providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

As noted previously, OJJDP is a component of the Office of Justice Programs (OJP). This Department of Justice agency emphasizes the importance of coordination among its components and with other Federal agencies whenever possible in order to obtain maximum results from OJP programs and initiatives. OJJDP's coordination efforts include joint funding, interagency agreements, and partnerships to develop, implement, and evaluate projects. This Final Plan reflects OJJDP's coordination efforts. For a more complete picture of OJP program activities that affect the field of juvenile justice, readers are encouraged to review the Office of Justice Programs Fiscal Year 2000 Program Plan when it becomes available. (Readers should check the OJP Web site at www.ojp.usdoj.gov periodically for an announcement of the availability of the OJP Program Plan.)

Fiscal Year 2000 Program Planning Activities

The OJJDP program planning process for FY 2000 was coordinated with the Assistant Attorney General, Office of Justice Programs, and all OJP components. The program planning process involved the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments from youth service providers, juvenile justice practitioners, and researchers who provide input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 2000, either within an existing project period or through an extension for an additional project or budget period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and fund availability.

The only projects described in this Final Program Plan are those that will receive Part C or Part D FY 2000 continuation funding under project period or discretionary continuation assistance awards. The Final Program Plan also references new program areas that OJJDP is considering for awards under Part C or D in FY 2000. This plan does not include descriptions of other OJJDP programs, including mentoring programs under Part G of Title II of the JJDP Act, the Drug Prevention Program, the Drug-Free Communities Support Program, the Enforcing Underage Drinking Laws Program, the Safe Schools Initiative, the Tribal Youth Program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. When appropriate, OJJDP issues separate solicitations for applications for funding for these or other programs that are not authorized under Parts C and D. Readers interested in learning about all OJJDP funding opportunities are encouraged to call

OJJDP's Juvenile Justice Clearinghouse at 800–638–8736 or visit OJJDP's Web site at www.ojjdp.ncjrs.org and click on ''Grants & Funding.''

Consideration for continuation funding for an additional project period for previously funded discretionary grant programs was based on several factors, including the following:

- The extent to which the project responds to the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 2000 program priorities.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with Section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas in which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or

2. With respect to a particular program described in Part C that is uniquely qualified.

Summary of Public Comments on the Proposed Comprehensive Plan for Fiscal Year 2000

OJJDP published its Proposed Comprehensive Plan for FY 2000 in the **Federal Register** (Vol. 64 , No. 199) on October 15, 1999, for a 45-day public comment period. OJJDP received 42 letters commenting on the Proposed Plan. Forty-one letters had one signature (although one of the single-signature letters provided comments from three law enforcement units). One letter was signed by two officials of an organization. All comments have been considered in the development of OJJDP's Final Comprehensive Plan for Fiscal Year 1999.

Thirteen law enforcement officers, including police chiefs, deputies, and lieutenants, commented. (One of the law enforcement letters was from an individual with a tribal police department, and one was the director of research and development for the police department.) In related fields, OJJDP heard from one individual in corrections, one in probation, one in court evaluation, and one in a domestic violence agency. A psychologist wrote, as did the director of a psychiatric clinic and a professor of nursing. An associate school superintendent also wrote. Comments were received from an Assistant Commonwealth Attorney and from two individuals in State juvenile justice agencies. Thirteen persons who commented were associated with a variety of organizations, associations, agencies, and programs, and one vice president of a private firm provided comments. Four commenters did not mention any profession or affiliation.

The writers expressed support for one or more of the 10 proposed priority areas, and several writers praised the list of 10 priority areas as a whole. Many of the commenters also wrote in support of prevention programming, and others expressed appreciation for OJJDP's publications and Web site. One or two writers supported one of several general programming areas, including truancy, teen courts, learning disabled youth in the juvenile justice system, capacity building, overrepresentation of minorities in the juvenile justice system, cooperation between police and the juvenile justice system, and mental health needs. Several writers expressed support for demonstration programs and training and technical assistance. Some writers indicated their interest in obtaining funding for their programs.

All comments received are summarized below together with OJJDP's responses. Those writers who supported various new program areas were all told that their comments will be considered in the planning process for FY 2000 and beyond, but that the funding available for this fiscal year limits OJJDP's ability to support new programming. In other instances where more than one writer commented on a particular program or area of programming, to avoid needless repetition in this summary, after an initial response below, subsequent responses refer the reader to the first response on that topic.

Comment: One writer, a law enforcement planner with a tribal police department, expressed concern that only one program in the Proposed Plan (the Tribal Youth Program) targeted American Indians. The writer noted that Indian Reservations are in rural areas and that most programs and services are located in cities and therefore not available to American Indian youth, who face a variety of problems, such as exposure to violence and child abuse, drugs, underage drinking, and violence in the schools and on the streets. ''Tribal resources to fund prevention and intervention activities,'' the writer indicated, ''are limited.'' The writer also stated that many tribes do not have the staff needed to prepare competitive grant applications and pointed out that, although the Proposed Plan mentions funds for technical assistance to tribes, no information was given as to how to contact the grantee, the American Indian Development Associates. Finally, the commenter asked if funds spent on ''numerous research, evaluation and data collection projects'' would not ''be better used in actual program implementation?''

Response: OJJDP recognizes the severity of the issues facing Native American youth. A recent Bureau of Justice Statistics (BJS) publication, *American Indians and Crime,* provides some statistics that demonstrate the growing problem of violence and crime in Indian country, including the following:

- American Indians experience per capita rates of violence that are more than twice those of the U.S. resident population.
- Nearly a third of all American Indian victims of violence are between the ages of 18 and 24.
- The 1997 arrest rate among American Indians for alcohol-related offenses (driving under the influence, liquor law violations, and public drunkenness) was more than double that found among all races.

These and other data provided in the BJS report show the need for increased funding, resource enhancement, and infrastructure/capacity building within Indian country. Research is a critical factor in documenting the need for increased funding to tribes. By funding and conducting research and evaluation programs, we obtain valuable information about what works and about best practices in the areas of program development and effective approaches for working with tribes.

OJJDP has had several funding opportunities for which all communities could apply, and, depending on the availability of funding, we expect to offer such opportunities again in the future. Examples of these programs include the Juvenile Mentoring Program, the SafeFutures initiative, Safe Start, Healthy Students/Safe Schools, and the Drug-Free Communities Support Program, to name a few. Indian communities have applied for and been selected to participate in some of these programs. However, with the Tribal Youth Program, Congress for the first time appropriated funds to OJJDP solely for the American Indian community. This program is part of the joint U.S. Department of Justice (DOJ) and U.S.

Department of the Interior Indian Country Law Enforcement Initiative, which addresses the compelling need to improve law enforcement and the administration of criminal and juvenile justice in Indian country. It should be noted that no more than 10 percent of the Tribal Youth Program funds may be used for research.

In addition to the Tribal Youth Program, there are several initiatives either in development or being implemented to address some of the issues that the writer raised. Three such initiatives are described briefly below:

• *Native American Mental Health Initiative.* A project of the White House's Domestic Policy Council designed to bring together several agencies within DOJ and the U.S. Department of Health and Human Services (HHS) in an effort to provide services to American Indian country.

• *Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE).* A project of the U.S. Attorney General that brings together several DOJ agencies to provide funding and resources to three pilot sites in Indian country.

• *Substance Abuse.* OJJDP and other Office of Justice Programs agencies are beginning discussions with the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention (within the HHS Substance Abuse and Mental Health Services Administration) on working together to provide services, programs, and funding to Native Americans. These discussions are expected to lead to interagency collaboration and possibly result in joint funding opportunities.

In addition to recognizing the obvious need in Indian country, OJJDP is also committed to providing training and technical assistance to tribes that have juvenile justice issues and programs. An OJJDP Fact Sheet (*Training and Technical Assistance for Indian Nation Juvenile Justice Systems,* FS 99105) provides information about the technical assistance available via OJJDP's grant with American Indian Development Associates. Copies of the Fact Sheet can be obtained by calling OJJDP's Juvenile Justice Clearinghouse at 800–638–8736 or by sending an e-mail request to puborder@ncjrs.org. The Fact Sheet is also available online at www.ncjrs.org/jjfact.htm#99105.

OJJDP's response suggested that the writer might want to be put on the mailing list for OJJDP's program announcements by calling the Juvenile Justice Clearinghouse at 800–638–8736 or send an e-mail request to askncjrs@ncjrs.org. Program announcements are also posted online at www.ojjdp.ncjrs.org (click on ''Grants & Funding'').

Most of OJJDP's funding is not provided under Parts C and D but is distributed to the States and territories through our Formula Grants, Challenge, and Title V (Community Prevention) programs. One example is the Native American Pass-Through Program. The Juvenile Justice and Delinquency Prevention Act specifies that a portion of each State's Juvenile Justice and Delinquency Prevention Formula Grant program funding be made available to fund programs for Indian tribes. This allocation, known as the Native American Pass-Through Program, provides funds to Indian tribes to perform law enforcement functions pertaining to the custody of children and youth. Areas receiving funding include police efforts to prevent, control, and reduce crime and delinquency; apprehension of criminal and delinquent offenders; and activities of juvenile corrections, probation, or parole authorities. The minimum pass-through for FY 1998 was $358,842. This amount was allocated to Indian tribes in 36 States. Historically, in many States, the actual amount awarded to tribes by States far exceeds the statutorily required amount. The name, address, and telephone number of the Juvenile Justice Specialist for the writer's State were provided, so that the writer could pursue these possible sources of funding.

Comment: A psychologist who works with juvenile offenders recommended that the plan include provisions for ''direct job placement services to help older juvenile offenders obtain and maintain employment.'' The writer suggested funding for either demonstration projects or research studies that could lead to more effective ways at helping this population find work.

Response: OJJDP appreciates the writer's interest in job readiness training, placement, and retention for older juvenile offenders and shares his views that such activities are important in deterring delinquent activity and providing meaningful career opportunities for youth. Over the past 2 years, OJJDP has partnered with the U.S. Department of Labor's Employment and Training Administration in the development of a comprehensive strategy to create education, training, and employment opportunities for at-risk and delinquent youth. Recently, the Department of Labor funded three sites to develop a model school-to-work education and job training curriculum in a correctional setting that emphasizes the importance of developing competency and life skills in a multitude of professions and providing the necessary support, advocacy, and followup upon a youth's return to the community. These sites are located in Florida, Ohio, and Indiana. OJJDP is providing the funding for a 12-month process evaluation and impact feasibility assessment at two of the three sites. It is intended that the comprehensive services developed under these grants will serve as models for other juvenile correctional facilities across the country.

OJJDP is also collaborating with the Department of Labor's Employment and Training Administration across several other program areas:

• OJJDP and the Department of Labor have provided funding support to the Boys & Girls Clubs of America to implement the TeenSupreme Career Preparation Initiative. This program provides employment training and other related services to at-risk youth through 41 local Boys and Girls Clubs.

• In order to encourage local communities to adapt best practices to improve the employability of at-risk and delinquent youth, the two departments are working toward having juvenile justice agencies represented on local youth councils. The Workforce Investment Act of 1998 established local youth councils to guide the development and operation of programs for youth at the local level. Youth councils are composed of members of the local workforce investment boards and representatives of youth service agencies, local public housing authorities, parents of youth seeking assistance, youth, the Job Corps and others as deemed appropriate.

• The two departments are providing collaborative technical assistance to both youth employment programs and OJJDP programs that involve juvenile offenders and high-risk youth.

• A live satellite videoconference is planned for the coming year to disseminate information concerning the programs available throughout the country that address employment issues and court-involved youth.

OJJDP is committed to developing model programs that address these issues and is equally concerned with supporting evaluations of these efforts that will measure both process and outcome variables.

Comment: An Assistant Commonwealth Attorney wrote in support of programming for three categories of offenders: female offenders, sex offenders, and status offenders, singling out programming for female offenders as the area he thought to be of primary concern in his

community. He also called for more emphasis on prevention. He indicated that before funding programs in Native American and Alaskan Native communities, OJJDP should ''strongly consider whether or not your programs are working in the rest of the country.'' The writer found the field-initiated research and evaluation programs ''too vague for comment'' and was unaware of ''many cases in our area involving lead or environmental hazards for children, although it is always important to do everything possible to protect children.'' Finally, the letter stated that OJJDP's focus should not be on research but on applying ''some of the knowledge from research to treatment and prevention.''

Response: OJJDP appreciates knowing the writer's view that, of the 10 areas proposed for consideration for new programming, the need for programs for female offenders is the area of most concern to his community.

In regard to the development of more programs and treatment for sex offenders, in FY 1998, OJJDP funded two projects designed to assess the feasibility of creating a juvenile sex offender typology based on national-level data. The researchers, one with the University of Baltimore, the other with the University of Virginia, each used a different method for typology construction. The University of Baltimore project relied on archival (information from official records) data, while the University of Virginia project used a combination of archival and prospective (interviews and questionnaire completed by juvenile sex offenders themselves) data.

As a result of their feasibility studies, both researchers concluded that it would be possible to create a juvenile sex offender typology based on a large, national sample of juvenile sex offenders. Each researcher has therefore submitted a new proposal to create this typology, and these proposals are currently under peer review. The goal of creating such a typology is to identify different subgroups of juvenile sex offenders who may present different levels of risk and need. Some juvenile offenders, for example, may safely be placed in community-based programs, while others will require institutional placement. At present, the tools are not available to make these distinctions easily or well. Additionally, a comprehensive typology may facilitate better decisionmaking about which youth will benefit from which type(s) of treatment.

OJJDP agrees with the writer's comment on the importance of prevention and treatment programs for status offenders. As noted in the Proposed Plan, prevention and treatment efforts at the early stages of delinquency are ''less expensive and more effective than efforts to change subsequent delinquent behavior.''

In regard to the writer's statement that OJJDP's focus ''should not be on research,'' OJJDP responded that the Office is continually striving to attain the appropriate balance among three vital and interrelated elements of OJJDP's mission: research, demonstration projects, and training and technical assistance. OJJDP believes that the Proposed Plan achieved a reasonable apportioning of resources among these three elements.

Comment: A chief of police wrote in support of prevention initiatives, such as programs to keep young people in school. The chief commented that parents who are ''victims of the social welfare system'' are likely to have children who will repeat their experience, and he offered specific suggestions for shoring up the welfare system. The chief also labeled the juvenile justice system ''inept'' and ''the major contributor to juvenile delinquency.''

Response: OJJDP agrees that it is imperative to focus strongly on prevention, and believes that the Proposed Plan does reflect such an emphasis. From mentoring programs to programs that seek to prevent the use and abuse of alcohol and other drugs'and from violence prevention to early intervention programs, OJJDP is committed to supporting a comprehensive, communitywide approach as an effective way to promote healthy childhood development and address the problems affecting our youth. For example, collaborative efforts among OJJDP, the U.S. Department of Education, and the U.S. Department of Health and Human Services are under way to address some of the very issues raised in the writer's letter regarding school attendance, societal influences, and family issues that contribute to the delinquency of our youth.

Without directly responding to the writer's negative view of the juvenile justice system, OJJDP sent him information about current levels of juvenile crime and violence and the juvenile justice system response and about OJJDP's comprehensive approach to preventing and intervening with juvenile delinquency. One document was the recently released *Juvenile Offenders and Victims: 1999 National Report,* which includes up-to-date data and offers an indispensable resource for informed policy decisions that will shape the juvenile justice system in the 21st century. A brochure on OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders was also provided. This brochure outlines a strategy that, when implemented, can provide appropriate prevention methods to children, families, and communities and intervene in the lives of first-time offenders with structured programs and services.

Comment: An individual who works in State law enforcement training as a curriculum specialist suggested the need for more emphasis on interactive dialog and cooperation between police and juvenile justice agencies. He also indicated that OJJDP publications are valuable in his work.

Response: OJJDP appreciates the writer's suggestion about the need for interactive dialog between police and juvenile justice agencies. The Department of Justice's Office of Community Oriented Policing Services (COPS) and OJJDP are sponsoring the Community Policing and Youth Study as part of our Youth Focused Community Policing program. This project is designed to assist the Department of Justice in planning youth and law enforcement issues. The project will provide communities across the country with current information on the innovative and promising practices of law enforcement agencies in addressing youth issues through community policing. Through this project, information will be developed and shared with the field through product dissemination, training and technical assistance, and a national conference in 2001.

In addition to this study, OJJDP has sponsored the replication of a unique collaborative effort between the New Haven Department of Police Services and the Child Study Center at Yale University that addresses the psychological impact of chronic exposure to violence on children and families. The Child Development-Community Policing Program brings police and mental health professionals together to provide each other with training, consultation and support and to provide direct interdisciplinary interventions to children who are victims of or witnesses to violent crimes.

Comment: A police chief wrote in support of teen courts, which he reports have been extremely successful in his county.

Response: OJJDP appreciates learning of the success of teen courts in the writer's jurisdiction. In 1999, the National Youth Court Center was created by OJJDP and funded by the

Juvenile Accountability Incentive Block Grants program, in collaboration with the U.S. Departments of Education, Health and Human Services, and Transportation. The National Youth Court Center at the American Probation and Parole Association and four affiliated agencies will offer training and technical assistance; develop products such as volunteer youth membership training materials, national guidelines on youth courts, and regional training programs; and provide a wide range of other services.

Youth courts are the fastest growing crime prevention program in the country, with more than 650 youth court programs in 49 States at this time. Youth court programs provide swift and immediate sanctions for youth experiencing their first contact with the juvenile justice system.

Most of OJJDP's funding is not provided under Parts C and D but is distributed to the States and territories through OJJDP's Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP encouraged the writer to explore these possible sources of funding and referred him to the Juvenile Justice Specialist for his State.

Comment: A police lieutenant wrote that OJJDP's 10 areas being considered for funding priorities are ''appropriate and worthy'' but suggested that another priority area be added: information exchange among a wide variety of human service providers. He also indicated that he found OJJDP's Web site and publications ''helpful and informative.''

Response: OJJDP appreciates the writer's support of the 10 program areas presented for consideration in the Proposed Plan and positive feedback about OJJDP's Web site and publications. OJJDP recognizes the importance of information exchange among a wide variety of human service providers.

In regard to the need for additional emphasis on confidentiality in the Proposed Program plan, for several years the issue of information sharing and confidentiality has been at the foundation of many of the programs and activities supported by the Missing and Exploited Children's Program (MECP) and other components within OJJDP. As such, issues relating to confidentiality and information sharing are addressed throughout the many programs, activities, training, and technical assistance activities supported by OJJDP.

MECP supports a number of training programs that focus on improving the systems response to missing and exploited children's issues. Several of these training programs are multidisciplinary in nature, requiring the participation of various agencies within a community. In addition to providing information on ways to improve the system's response to child sexual abuse and exploitation issues, topics relating to cooperation, interagency collaboration, information sharing, and confidentiality of juvenile records are addressed in these training sessions.

Recognizing the complexity of this issue and its broad implications for the various components of the juvenile justice system, in June 1997, OJJDP, in cooperation with the U.S. Department of Education, published *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs.* This publication, which is available at no cost from OJJDP's Juvenile Justice Clearinghouse (800–638–8736), provides educators, law enforcement personnel, juvenile justice professionals, and community leaders with information to help them forge partnerships, improve information sharing, and enhance the operation and functioning of the juvenile justice system.

In addition to these activities, OJJDP's Youth Focused Community Policing initiative is working with communities to help them tackle difficult issues relating to information sharing and confidentiality. OJJDP is preparing a Bulletin on information sharing, which should be ready early next year. In addition, OJJDP, in cooperation with the Department of Education, is currently developing a solicitation for an information-sharing training and technical assistance program. OJJDP provided the writer with information on how to be put on the mailing list for program announcements and how to access them online.

Comment: An individual commented that behavior must have ''sure and swift'' consequences and that sanctions must be appropriate and timely.

Response: To address these concerns, OJJDP described the comprehensive approach to juvenile delinquency that it has been pursuing for the past several years. Since OJJDP published the *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* in 1993, it has advocated that States, local governments, and communities adopt a research-based comprehensive strategy approach to address the problems of juvenile crime and victimization. OJJDP has synthesized decades of research and practice from practitioners and established a framework for implementing an effective juvenile justice system. Through support of research, demonstration programs, and training and technical assistance, OJJDP encourages States, local governments, and communities to use the Comprehensive Strategy to develop coordinated, community-wide approaches to preventing and intervening with juvenile delinquency and victimization. OJJDP focuses its support on programs and initiatives that further one or more of the basic principles of the Comprehensive Strategy:

- Strengthen families in their role of guiding, disciplining, and instilling sound values in their children.
- Support core social institutions and their role in supporting families and helping children develop to their maximum potential.
- Promote prevention strategies and activities that reduce the impact of negative (risk) factors and enhance the influence of positive (protective) factors in the lives of youth at greatest risk of delinquency.
- Intervene immediately and appropriately at the first signs of trouble in a child's life.
- Establish a system of graduated sanctions and a continuum of services, including aftercare, to respond appropriately to the needs of each juvenile offender.
- Protect the public from the most serious, violent, and chronic juvenile offenders by providing for their incapacitation while at the same time addressing their treatment needs.

OJJDP believes that, as the Comprehensive Strategy and its principles are implemented in communities throughout the country, we will see a continued decline in juvenile violent crime, which has been decreasing for each of the past 4 years, and an increase in public safety and in the well-being of the Nation's youth.

Comment: A deputy chief of police expressed concern that OJJDP's support for assessment centers focused exclusively on what he called ''the Florida model.'' He urged OJJDP to look at other programs that may be as effective and that are designed for the local community.

Response: OJJDP has supported the concept of assessment centers through its Community Assessment Center (CAC) demonstration effort. CAC's provide a 24-hour centralized point of intake and assessment for juveniles who have or are likely to come into contact with the juvenile justice system. The main purpose of a CAC is to facilitate earlier and more efficient prevention

and intervention service delivery at the ''front end'' of the juvenile justice system. OJJDP's CAC concept was not based on the Florida Juvenile Assessment Centers; it was developed from the Office's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.

In FY 1997, two communities (Denver, CO, and Lee County, FL) began or enhanced their ongoing CAC planning process. Two additional communities with existing assessment centers (Jefferson County, CO, and Orlando, FL) also began enhancing their operations to become more consistent with OJJDP's CAC concept. The selection of the sites for this demonstration effort was not related to the implementation of the ''Florida model'' but was directly related to the implementation of the CAC concept as outlined in OJJDP's concept paper *Community Assessment Centers: A Discussion of the Concept's Efficacy.* In addition, a 2-year independent evaluation of the funded projects was initiated, and a separate grantee began providing training and technical assistance to the project sites. OJJDP believed this program provided the opportunity to examine OJJDP's CAC concept, while allowing communities to customize it to their local needs.

During the second year of the demonstration effort, a limited competition was held among the four CAC sites for increased funding to two sites to develop a fully operational CAC, including all four CAC conceptual elements. Although the Jefferson Center for Mental Health did not choose to apply for the increased funding to implement all four elements of OJJDP's concept, OJJDP provided funding for another 12 months to further enhance the Jefferson County Assessment Center by conducting an intensive review of existing assessment tools and enhancing the case management process. The two sites that received increased funding to develop a fully operational CAC were Denver and Orlando.

OJJDP sent the writer copies of the original concept paper, *Community Assessment Centers: A Discussion of the Concept's Efficacy, the Fact-Finding Report on Community Assessment Centers,* and a recent OJJDP Fact Sheet on CAC. As mentioned in the CAC Fact Sheet, OJJDP anticipates the publication of a CAC Bulletin in a few months. OJJDP referred the writer to the appropriate Program Manager for specific questions regarding OJJDP's CAC demonstration effort.

Comment: One individual wrote in support of prevention programming such as teen centers and Neighborhood Watch.

Response: OJJDP agrees with the writer's position on the importance of focusing on prevention and provided a brief summary of its Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. (See detailed response: to the comment: on ''sure and swift'' consequences, above.)

Comment: An official with the American Psychological Association expressed support for OJJDP's comprehensive and empirically based plan and its efforts to address critical concerns related to juvenile justice, delinquency prevention, and child maltreatment. The writer especially praised the emphasis on prevention and early intervention and lauded the 10 areas being considered for new programming. In regard to research needs, the writer suggested continued efforts in the areas of mental health, educational services for children within the juvenile justice system (including those with disabilities and those who are gifted and talented), and minority overrepresentation in the system. The letter also included specific recommendations for additional text to be added to the plan, generally consisting of references to cultural competence and mental health needs.

Response: OJJDP appreciates the writer's expression of strong support for the Comprehensive Plan and shares his concern about the need to address issues of cultural competence. OJJDP explained how several of the writer's specific suggestions for changes will be incorporated into the Final Program Plan. These changes are reflected in the following paragraphs.

Introduction to Fiscal Year 2000 Program Plan (64 FR 56086, Nov. 29, 1999)

Goals three and four:

- OJJDP supports efforts in the area of corrections, detention, and community-based alternatives to preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders that provide developmentally appropriate, culturally competent mental health and other critical services.
- OJJDP seeks to support law enforcement, public safety, and other justice agency efforts to prevent juvenile delinquency, intervene in the development of chronic delinquent careers, and collaborate with the juvenile justice system to meet the needs of dependent, neglected, and abused children, children who need mental health interventions, and children with disabilities.

Sentence 3 Under ''Public Safety and Law Enforcement'' (64 FR 56086, Nov. 29, 1999)

Funds would also be provided to a partnership between youth and health and mental health agencies to continue school-based activities and efforts to address the effects on children of exposure to domestic violence.

OJJDP did not include the writer's recommended changes for new program areas because funding restraints have limited the Office's ability to consider new programming and thus it would serve no purpose to modify the areas of interest this year. OJJDP assured the writer that his concerns will be given serious consideration in the planning process for FY 2001.

Comment: A lieutenant in a sheriff's office commented that he would like to see more sex offender programs, more burglary reduction efforts, and more violence prevention programs for the juvenile population. He also called for strengthening public education efforts with all juveniles.

Response: OJJDP described its programming efforts that focus on preventing and intervening with serious violent offending, particularly those that further one or more of the principles outlined in the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. (See earlier, detailed response to the comment on ''sure and swift'' consequences.)

Comment: An officer with a private nonprofit agency working in the area of substance abuse assessments and treatment found all 10 broad programming areas relevant to her agency but singled out 5 top priorities (listed in order): status offender programs; female offender programs; ''blueprint'' program development, replication, and evaluation; improvements in sanctioning; and sex offender programs. While recognizing the usefulness of research and development, the writer would give higher priority to demonstrations and training and technical assistance. The commenter described OJJDP's Web site as a useful resource but noted that materials mailed by OJJDP did not always arrive in a timely fashion.

Response: In the area of research and development versus demonstrations and training and technical assistance, OJJDP is continually striving to attain the appropriate balance among these three vital and interrelated elements of OJJDP's mission and believes that the Proposed Plan did achieve a reasonable

apportioning of resources among research, demonstrations, and training and technical assistance.

OJJDP appreciates the writer's positive feedback on the usefulness of the Office's Web site as well as her concern about the mailing delays she has experienced in receiving information from OJJDP. The Office will try to identify any possible problem that may be causing the delays she has encountered in receiving OJJDP mailings.

Comment: The vice president of a private firm strongly supported one of OJJDP's 10 broad areas being considered for new program funding. The ninth area (prevention and treatment programs for status offenders), according to the writer, is one that should be reviewed to see what progress has been made and to identify best practices that help divert status offenders from the juvenile corrections system. The commenter also approved of OJJDP's renewed emphasis on school truancy, which ''can influence a child's path toward delinquency.''

Response: OJJDP appreciates learning of the writer's support for developing prevention and treatment programs for status offenders. OJJDP agrees that this is an important area of work and has been pleased by both the positive response from the field and the work already under way in this area as part of the Office's ongoing programs.

With regard to school truancy and its effect on children, OJJDP is in the process of evaluating truancy reduction projects in eight demonstration sites: Athens, GA; Contra Costa, CA; Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. The purpose of the evaluation is to determine how community collaboration can impact truancy reduction and lead to systemic reform and assist OJJDP in the development of a community collaborative truancy reduction program model.

Comment: A manager of a gender-specific program in juvenile correctional services encouraged OJJDP to take a leadership role on programs for female juvenile offenders, particularly in locating and funding a model program, with guidelines for staffing and training. The individual expressed appreciation for OJJDP grants, site evaluations, training opportunities, and publications.

Response: OJJDP appreciates the writer's comments on the proposed priority area of programming for female juvenile offenders and is pleased to learn that OJJDP funding has been beneficial to the youth served at the Rhode Island Training School.

OJJDP noted that at the present time it is addressing some of the important issues raised in the letter through its training and technical assistance co-agreement with Greene, Peters, and Associates and Northwest Regional Educational Laboratory. For example, OJJDP plans include the following:

- Developing and piloting training curriculums for decisionmakers and entry- to mid-level staff.
- Offering ''training of trainers'' courses to staff with training responsibilities in their jurisdictions to ensure quality and consistency of the training approach and design. (Selection will be made through a competitive application process.)
- Developing and piloting an advanced training series on emerging topic-specific gender issues affecting adolescent girls.
- Establishing a Web site with a capacity for delivering timely information on trends and challenges in juvenile justice to aid policymakers and program staff in improving gender programming in their jurisdictions.
- Recruiting, orienting, and managing a diverse cadre of consultants able to address the training and technical assistance needs of those who work with girls.
- Developing an educational media package for use by community leaders, agency staff, and decisionmakers to build awareness of gender-specific issues.

Comment: The director of a psychiatric institute and clinic wrote that there is a need to enhance the quality of research and program evaluations in the area of juvenile sex offending. The writer encouraged OJJDP to make considerable funding available to conduct field-initiated research and evaluation programs in this field.

Response: OJJDP appreciates the writer's thoughtful comments on the importance of addressing the problem of juvenile sex offending and support for more programs and treatment in this area. For a detailed description of OJJDP's work in this area, readers should refer to the earlier response to the comment from the Assistant Commonwealth Attorney.

While OJJDP agreed that field-initiated research and evaluation programs offer the potential to expand knowledge of juvenile offending and develop methods to assess and treat these types of problems, funding available for this fiscal year will impact the Office's ability to support new programming under Parts C and D.

Comment: The director of public policy in an organization that provides comprehensive youth development programming to school-age girls wrote that the ''increased general level of domestic violence, violence in the media, and the apparent increasing tolerance for violence in society'' should be addressed in the new program area focusing on female offenders. The writer proposed that in the program description ''unique needs'' of female offenders be changed to ''additional needs'' of female offenders and suggested that when specifying these needs OJJDP should include ''sexual abuse, teen pregnancy, and responsibility for their children.'' Because a high proportion of status offenders are females, this individual suggested that OJJDP develop prevention and early intervention programs in a gender-sensitive manner, with recognition of the additional needs of young women. Lastly, the writer expressed surprise that OJJDP is planning to fund capacity building to help a program ''establish itself in an already crowded field.''

Response: OJJDP appreciates the writer's specific comments and suggestions on 2 of the 10 programming areas presented for consideration in the Program Plan: those dealing with female offenders and prevention and treatment programs for status offenders. In regard to using ''additional'' instead of ''unique'' to describe the needs of female juvenile offenders in the description of the proposed new program area, the descriptions of the 10 program areas included for consideration for new funding in the Proposed Plan are not being repeated in the Final Plan. However, in future documents addressing this issue, OJJDP will reword the phrase to read ''additional and unique needs'' of female juvenile offenders. The writer also recommended that OJJDP acknowledge the responsibility of single parenthood many female offenders are faced with. OJJDP believes this is important and provided the writer with copies of two OJJDP Fact Sheets that discuss adolescent motherhood and responsible fatherhood.

OJJDP agreed with the writer's position that prevention and early intervention programs should be developed in a gender-sensitive manner, with full recognition of the additional needs that young women often carry. OJJDP is funding a program in Cook County, IL, that is directed at juvenile female offenders. The county has developed gender-specific needs, strengths, and risk assessments for juvenile female offenders; provided training in implementing gender-appropriate programming; and designed a pilot program with a community-

based continuum of care and a unique case management system. OJJDP hopes to see this approach replicated across the country.

OJJDP noted the writer's disagreement with its plans to fund America's Promise. It is true that there are many such organizations in existence, but OJJDP believes that, when possible, it is worth supporting organizations that are in a unique position to mobilize and energize communities and provide role models for young people. As part of its commitment to this effort, OJJDP chairs the Public/Private Mentoring Alliance, which is composed of Federal and private organizations involved in mentoring. OJJDP looks forward to working with a number of alliances and groups in the coming year in an effort to help young people develop into healthy, productive adults.

Comment: The assistant coordinator of a project that addresses the need for gender-specific programs for female juveniles wrote about the program's goals and stated that OJJDP's support will assist the program to continue their work with female juvenile offenders.

Response: OJJDP appreciates learning about the writer's Girls Advocacy Project and support for the Office's continued work in the area of developing and studying programs addressing female offenders. OJJDP is supporting several projects that address the unique needs of female offenders. In 1996, OJJDP awarded a grant to design pilot training and technical assistance resources for entry-level staff in detention and correctional facilities, social service agencies, and youth-serving organizations responsible for working with female juvenile offenders or those at high risk of offending. This training will help improve gender programming services in many jurisdictions.

Most of OJJDP's funding is not provided under Parts C and D, but is distributed to the States and territories through the Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP provided the writer with contact information for the Juvenile Justice Specialist in his State to explore these possible sources of funding.

Comment: The commissioner for a State juvenile justice agency wrote that OJJDP should perhaps focus on the target age population most at risk for offending, rather than early childhood prevention programs (citing the OJJDP priority to reduce lead and environmental hazards) that could be served by the U.S. Department of Health and Human Services. The writer also stated that there is a need for opportunities for major Federal agencies to partner for children and that it would be extremely helpful to have Federal assistance and support for efforts to build community mobilization efforts. The writer considers status offenders to be an ongoing priority area in his State and asked that OJJDP take a leadership role in this area. Lastly, this individual wrote that OJJDP could be far more effective in providing technical assistance and suggested an alternative approach for responding to such requests.

Response: OJJDP agrees that Federal assistance can be helpful to communities seeking to ''grow capacity.'' OJJDP is involved in extensive capacity-building efforts, particularly through its training and technical assistance programs, projects, and activities.

Including the reduction of lead and environmental hazards as one OJJDP's program priorities for consideration fits within the Office's strong emphasis on prevention activities. This Administration has aggressively pursued interagency partnerships in crossover areas of interest, and it is clear that the effects of elevated levels of lead in the bloodstream can cause children to suffer from physical, neurobiological, and cognitive problems that may lead to aberrant behavior, including aggression and delinquency.

With respect to the writer's concern regarding the provision of technical assistance, OJJDP has recently awarded a contract to operate the Formula Grants Training and Technical Assistance Program to Developmental Associates, Inc. (DA). The transition from the previous technical assistance provider, Community Research Associates, is now complete. The mission of OJJDP's partnership with DA continues to be the effective and expedient delivery of technical assistance to States and local agencies for implementing the provisions of the comprehensive State Plan. OJJDP will continue to explore the most efficient manner to provide States and local agencies technical assistance in a wide variety of policy and program areas dealing with planning and evaluation, delinquency prevention, diversion and early intervention, secure detention and alternatives to it use, corrections, graduated sanctions, and other specialized priorities delineated in the Juvenile Justice and Delinquency Prevention Act.

Comment: A deputy director of public safety wrote that the programs most worthy of funding are those that ''demonstrate success upon which other financially assisted departments could build.'' He also acknowledged three areas of OJJDP's focus that would provide the most benefits to his community: Developing Blueprint Programs Through Replication and Evaluation, Developing Prevention and Treatment Programs for Status Offenders, and Supporting Field-Initiated Research and Evaluation Programs.

Response: OJJDP appreciates learning which programming areas presented for consideration in the Program Plan would, in the writer's view, be most beneficial to the his community. OJJDP agreed that these are particularly important areas of work and has been pleased by both the positive response from the field and the work already under way in these areas as part of the Office's ongoing programs.

Comment: The associate executive director of a child-and family-focused agency expressed appreciation for OJJDP publications. Although agreeing that the program priorities in the Proposed Plan were appropriate, the writer identified the following additional areas for more OJJDP attention: family violence—focus on family prevention strategies; early childhood violence and primary prevention alcohol/drug prevention models; violence prevention in schools—alternatives to suspension for ''zero tolerance'' policies; and models for early identification of troubled youth. This individual supported funding demonstration projects and program evaluations and encouraged OJJDP to sponsor training events. Lastly, the writer indicated that direct Federal discretionary grants to community programs is a better opportunity than block grant funding.

Response: OJJDP appreciates the writer's positive feedback on its priority areas and its publications program and noted that information dissemination will remain a priority for the Office. During FY 1999, OJJDP produced more than 90 documents and distributed almost 4 million publications. During FY 1999, the OJJDP home page received almost 750,000 ''hits.'' The site is continually updated with ''subpages'' highlighting specific OJJDP programs to provide users with the most current information.

With regard to the writer's comment on block grant funding, both the Congress and OJJDP seek to establish a balance between State and local block and formula grant funding and categorical discretionary grants. Block and formula grants allow States and local communities to meet priority problems and needs identified through planning efforts that are suggested through Federal research, evaluation, training and technical assistance, and

information resources. Innovation and expansion of services are hallmarks of these programs. Discretionary grants provide an opportunity to meet national needs through demonstration and replication programs. Demonstration programs are based on research and seek to determine whether program models are effective in a variety of settings. Replications establish proven effective programs in communities across the country. OJJDP believes that this is currently an appropriate balance of these program types.

Comment: A chief of police wrote in support of OJJDP's funding priority areas and expressed the need for more programs that assist law enforcement officers who must process juvenile offenders and more information for those officers processing juvenile offenders who commit serious offenses. The writer stated that enhanced training and technical assistance from OJJDP would be of greater benefit to the law enforcement community than research and development. He also indicated that his department made use of OJJDP's Web site.

Response: OJJDP is pleased to learn that each of the 10 programming areas listed as priorities in the Program Plan were relevant to the writer's agency. OJJDP noted the writer's comment on the importance of enhanced training and technical assistance for the law enforcement community, especially in the area of interagency computer network access.

OJJDP also appreciated hearing that the Crime Analysis/Planning and Research Division in the writer's department uses the Office's Web site to stay informed about grants and publications. The OJJDP home page is an important dissemination tool, and it is continually updated with ''subpages'' on specific programs to provide users with the most current information.

Comment: An adult probation and parole supervisor wrote in support of partnerships between juvenile justice and the Department of Education and discussed the necessity for both departments to adopt prevention efforts for students with learning disabilities.

Response: OJJDP appreciates the writer's comments about the need for juvenile justice and education agencies to work together to address the needs of learning disabled youth. OJJDP and the U.S. Department of Education, Office of Special Education and Rehabilitative Services, recently awarded a grant to the University of Maryland to establish a new Center for Students with Disabilities in the Juvenile Justice System. The Secretary of Education and the Attorney General expect this project to have a significant impact on the improvement of services for students with disabilities in the justice system. Improvements in the areas of prevention, educational services, and reintegration based on a combination of research, training, and technical assistance will lead to improved results for children and youth with disabilities. The Center will provide guidance and assistance to States, schools, justice programs, families, and communities on designing, implementing, and evaluating comprehensive education programs. These programs will be based on research-validated practices for students with disabilities in the juvenile justice system. OJJDP referred the writer to the appropriate contacts for more information about the Center.

Comment: A professor of nursing wrote to support the priorities for funding, particularly field-initiated research. The writer described an interdisciplinary, university-based research and service program that features home visitation and support group intervention. She also stated that it is imperative for university-based programs developed in collaboration with communities to have the ability to compete for OJJDP funding.

Response: OJJDP appreciates hearing the writer's support for the 10 broad priority areas for new funding in the Proposed Plan and of her particular interest in funding for field-initiated research. OJJDP thanked the writer for providing articles describing the success of the Project Healthy Grandparents program that supports positive development in children. OJJDP suggested that the writer watch for program announcements on OJJDP's Web site during the coming months for possible funding opportunities from funding streams other than those that support programs under Parts C and D of the JJDP Act.

Comment: The director of a youth services organization wrote in support of funding prevention programs for youth and commented on the usefulness of OJJDP services, publications, and national statistics.

Response: OJJDP appreciates hearing that its publications with national statistics and information on juvenile justice issues help the writer to shape programs on a local level. One of OJJDP's most recent publications, Juvenile Offenders and Victims: 1999 National Report, provides a comprehensive overview of juvenile crime, violence, and victimization and the response of the juvenile justice system. It illustrates OJJDP's efforts to make critical information available to local and national juvenile justice policymakers and community leaders.

Disseminating information about research, statistics, and programs that work has been, and remains, a priority at OJJDP. During FY 1999, OJJDP produced more than 90 documents and distributed almost 4 million publications. OJJDP referred the writer to its Web site (www.ojjdp.ncjrs.org) for more information about the National Report and other OJJDP publications.

Comment: A mental health advocate wrote to support OJJDP's publications, its Web site, and particularly its ''fax on demand'' service.

Response: OJJDP appreciates hearing that its publications program is helpful. As noted above, disseminating quality information continues to be a priority and several OJJDP publications have won national awards. OJJDP encouraged the writer to access other electronic resources besides the ''fax-on-demand'' service, including OJJDP's electronic mailing list, JUVJUST, and the Office's recently redesigned Web site (www.ojjdp.ncjrs.org). JUVJUST alerts subscribers to new documents, funding opportunities, and other OJJDP news.

Comment: An individual suggested that OJJDP develop a set of ''value-screens'' and provided mathematical instructions on how decisions should be made. The writer provided a list of priorities in order of importance based on his intuition and another list based on a matrix of values, using the value-screen method.

Response: OJJDP is intrigued by the writer's idea about using value-screens for decisionmaking and noted that the information would be passed along to the program planning team for their consideration.

Comment: An individual wrote to share his personal priorities, including getting parents— especially fathers— involved with their children, extending services for children from childhood to young adulthood, sharing news/information about children in other States with children across the country, providing summer activities for students, and developing community centers/sports for youth.

Response: OJJDP believes that its proposed program priorities for FY 2000 reflect a commitment to prevention activities similar to the personal priorities shared in the comment letter. OJJDP provided the writer with a recent OJJDP Fact Sheet on the topic of responsible fatherhood.

Comment: A police sergeant identified five areas that he believes would have the most direct impact on his jurisdiction, including improvement of the juvenile sanctioning system;

programs for female offenders; developing, evaluating, and replicating blueprint programs; juvenile sex offending; and prevention and treatment programs for status offenders. The writer indicated that it is important to fund new and innovative programs, but provision of enhanced training and technical assistance should not be overlooked.

Response: OJJDP appreciates learning of the five program areas that would have the most impact in the writer's jurisdiction. OJJDP agreed that these are important areas of work and has been pleased by both the positive response to them from the field and the work already under way in these areas as part of the Office's ongoing programs.

OJJDP appreciates the positive feedback about the Office's training seminars and agrees with the writer's statement that providing enhanced training and technical assistance to juvenile justice practitioners is essential. OJJDP will continue to keep this activity a priority.

Comment: The executive director for an agency that provides support to families of incarcerated persons wrote about the need for attention to youth who have an immediate family member in prison. The writer indicated that mentoring programs are not reaching this population of youth and that they are particularly at high risk for incarceration themselves as juveniles.

Response: OJJDP appreciates the writer's sharing information about her program and agrees with the need for prevention programs that address the issues she raises. In all of OJJDP's efforts, consistent with the OJJDP Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, emphasis is placed on risk-focused prevention. The youth referenced in the letter, assuming that there are other community, individual, peer and/or family-related risk factors present, are definitely considered at risk and are recommended for priority targeting in any OJJDP-supported program.

OJJDP advised the writer that most of OJJDP's funding is not provided under Parts C and D, but is distributed to the States and territories through our Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP provided the writer with contact information for the Juvenile Justice Specialist in her State to explore these possible sources of funding.

With regard to funding for mentoring programs, Part G of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, authorizes OJJDP to fund a Juvenile Mentoring Program (JUMP). In fiscal year 2000, Congress appropriated $12 million to support this program, including demonstration projects, technical assistance, evaluation, and support for other specific programs such as the Big Brothers Big Sisters program. The goal of the JUMP program is to reduce juvenile delinquency and gang participation by at-risk youth, to improve academic performance of at-risk youth, and to reduce the dropout rate for at-risk youth through the establishment of one-to-one mentoring between an adult and a juvenile. OJJDP encouraged the writer to consider submitting an application for a forthcoming competitive solicitation the Office will issue in early 2000 to fund additional mentoring sites around the country.

Comment: The executive director of the agency designated to administer a State's OJJDP funds wrote in support of the OJJDP Plan's broad view and its programs tailored to specific needs of special populations, including status offenders, female offenders, and Native American young people, with an emphasis on research and evaluation. The writer expressed the need for programs that address the mental health needs of young people and aftercare programs for juveniles leaving the system.

Response: OJJDP appreciates the writer's positive comments about the work of the Office. With regard to meeting the mental health needs of youth in the juvenile justice system, the writer was provided with a copy of an OJJDP Fact Sheet entitled Mental Health Disorders and Substance Abuse Problems Among Juveniles. OJJDP intends to keep mental health needs of juveniles at the forefront as new programs are developed within the juvenile justice system. In the near future, OJJDP will release a new competitive solicitation for a multiyear research and development effort to examine current research and theoretical literature on mental health and related substance abuse issues among juvenile offenders.

OJJDP has committed extensive resources in the area of aftercare/reintegration services for juvenile offenders. Since 1987, OJJDP has supported a long-term research, demonstration, and testing project focused on aftercare. The Intensive Aftercare Program (IAP) model has evolved from this research. The goal of the IAP model is to reduce recidivism among high-risk parolees. The model assumes that effective intervention requires not only intensive supervision and services following institutional release, but also a focus on reintegration during incarceration. In addition, the IAP proposes a highly structured and gradual transitional process that serves as a bridge between institutionalization and aftercare. An independent outcome evaluation will examine recidivism using a followup period of 1 year after release from the institution and multiple measures of reoffending behavior. These measures will include arrest, arrest with adjudication, and days to recidivism. OJJDP is sharing its interim findings with the Attorney General's ''reentry court'' project team. The writer was provided copies of relevant OJJDP publications on the topic of aftercare.

In addition to the IAP, OJJDP has been collaborating with the Boys & Girls Clubs of America to implement a pilot project known as ''Targeted Reintegration.'' This project is an effort to provide Boys & Girls Club services to youth in residential placement and, upon their reentry to the community, to encourage youth to become involved in activities sponsored by the Boys & Girls Clubs. Once released, youth are provided a mentor through the Boys & Girls Club, are seen by their parole officer, and are expected to attend a Boys & Girls Club at least three times a week.

Comment: The director for policy advocacy for a faith-based organization that is part of the Boston Ten Point Coalition and that works on gang prevention and intervention, youth crime, and delinquency wrote that to his knowledge, only one faith-based organization (FBO) is receiving direct funding from OJJDP. The writer provided suggestions for how OJJDP might help ''to get more FBO's eligible for OJJDP funding.'' This individual indicated that his organization has been doing much work with at-risk girls and OJJDP should consider FBO's as possible recipients of these grants. Faith-based organizations are also providing arts programs, and the writer would like funding expanded to include cultural education curriculums offered by such organizations to incarcerated and at-risk youth.

Response: OJJDP appreciates the writer's interest in seeing greater involvement of faith-based organizations in gang prevention and intervention and other youth delinquency programs. OJJDP further requested the writer's assistance in enhancing the Office's current mailing list to include a special tier of faith-based organizations and provided the appropriate agency staff contact to start a dialog on this matter.

As to direct funding, OJJDP informed the writer that it is currently providing

funding to faith-based Juvenile Mentoring Program (JUMP) sites. In addition, to be eligible for OJJDP's Drug-Free Communities program, applicants had to ''demonstrate that a community coalition has been established,'' containing at least one representative of several specified groups, including ''religious or fraternal organizations.''

OJJDP supports the work being done by the Ten Point Coalition and looks forward to joining the ongoing discussions within the U.S. Department of Justice to help promote the good work the Coalition is doing.

The writer's comments concerning FBO's, arts programs for incarcerated youth, and programs for female offenders will all be considered in OJJDP's planning process for FY 2000 and beyond.

Comment: The directors of program development and research for a law enforcement agency wrote to suggest modification of the plan to incorporate projects that develop the role of community policing for the prevention and reduction of juvenile crime. The writers suggested three projects that would further these efforts: a publication series that would educate law enforcement personnel as to the potential of community-oriented approaches to juvenile crime, demonstration projects modeled after the faith-based approach initiated in Boston by the Ten Point Coalition working in cooperation with police departments, and the development of evaluation of efforts that expand on the school-based problem-solving model.

Response: OJJDP appreciates the writers' thoughtful and insightful synopses of the three project areas that would further the role of community policing in juvenile crime reduction and prevention. OJJDP is particularly excited about the work being done by the Ten Point Coalition and is involved in ongoing discussions about promoting work in the juvenile justice area by faith-based organizations. OJJDP looks forward to continuing its dialog with the Police Executive Research Forum concerning the areas of interest they raised in their letter.

Comment: Three units within a police department reviewed OJJDP's plan and provided comments. The commander of the investigative services unit indicated that equal priority and emphasis should be given to research, practical application, and training for intervening professionals and to continuation and growth of a national resource center for safe schools that could provide technical assistance, research, and information. The supervisor of the sex crimes unit noted an increase in juveniles involved in sexual offenses and would like a focus on the impact of pornography films and VCR's on these offenses. He also is concerned about child victims not showing up for court and suggests that OJJDP investigate why this happens and how often. A supervisor of a gang squad listed, in order of priority, the areas that he thinks could be implemented by his department: juvenile crime trends; field-initiated research and evaluation programs; developing, replicating, and evaluating model programs; prevention and treatment programs for status offenders; and improving the juvenile sanctions system. This individual listed programs that he believes should be given consideration in his community and suggested future studies and research in the following areas: transient and migrating gangs; Asian gang factions; skinhead/white supremacist factions of gangs; coordination of a national strategy to identify and combat these criminal groups, including immigration issues, teamed with State, Federal, and local authorities; and studies and research into the sources of firearms used in violent crimes.

Response: OJJDP appreciates hearing comments from the representatives of the police department units and their suggestions for directing OJJDP programming resources. OJJDP acknowledged the concern about the nationwide incidents of school violence and the need for training and technical assistance on the issue. OJJDP plans to continue funding the National Resource Center for Safe Schools in Portland, OR, which produces a number of training and technical assistance materials to combat this issue. OJJDP also promised to look into the questions raised about trends in the increase of Part II sex offenses and the number of child abuse cases dropped. A representative from the Office's Research and Program Development Division will respond to the commenter directly on those issues. Finally, OJJDP noted the five programming areas judged as having the most impact on the writers' department and agreed with their importance. The Office has been pleased by the positive response from the field about the work already under way in these areas as part of its ongoing programs.

Finally, in response to the need for continued emphasis to combat juvenile gangs, OJJDP reaffirmed that gang prevention, intervention, and suppression remains one of the Office's highest priorities. OJJDP appreciates the positive comments about its National Youth Gang Center as well as interest in its Gang-Free Communities Initiative, which will likely entail a replication of the OJJDP Comprehensive Gang Model in multiple U.S. cities. Early evaluation data from the five existing demonstration sites indicate promising preliminary evaluation results in terms of reducing gang crime, violence, drug use, and drug sales. OJJDP is excited about the possibility of replicating this model with local adaptations around the country. OJJDP acknowledged the comment that many communities lack good research on intervening with migratory gangs of various ethnicities and on white supremacist/skinhead groups.

Comment: The program director of a military academy that works with at-risk youth wrote to suggest the use of intervention and education to positively impact youth's behaviors. The writer noted that there is a lack of programs for middle and high school students and for youth who are marginally involved in the juvenile justice system. Information about the academy's program, which includes elements of mentoring, was provided. The writer closed with a request that OJJDP look into this type of program.

Response: OJJDP noted that the writer's program fulfills a need to support youth at risk of entering the juvenile justice system or youth who have marginally been involved with the juvenile justice system and agreed that there is a need to address these youth. OJJDP provided a brief summary of its comprehensive approach and sent the writer a copy of its Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, which lists a variety of model intermediate sanctions programs that provide structure, education, and leadership training to youth. (See the detailed response to the comment on ''sure and swift'' consequences above for more information about the Comprehensive Strategy.)

Most of OJJDP's funding is not provided under Parts C and D, but is distributed to the States and territories through Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP provided contact information for the writer's State Juvenile Justice Specialist to explore these possible sources of funding and an agency contact for more information about the Office's programs.

Comment: A law enforcement officer wrote that field-initiated research and evaluation is most important and that there is a need for the development, replacement, and evaluation of model ''blueprint'' programs and for model practices in delinquency and dependency courts. The writer also expressed a need for facilities for

troubled youth and for appropriate sanctions for their actions. Finally, there is a need for prevention and treatment programs for status offenders.

Response: OJJDP is actively engaged in advancing the program areas raised by the writer. OJJDP will pass on the writer's concerns about the issues facing his jurisdiction to the Office's program planning team for their consideration.

Comment: The director of a truancy center described the program's approach, including targeting of middle school-age children and younger, to enhance successful intervention. The program works closely with probation, counselors, judges, law enforcement, school administrators, social workers, and parents to provide coordinated services and case management. The writer asks that OJJDP recognize the center's approach as ''unique and worthy of consideration'' during evaluation and prioritization of funding activities. He also indicated the two programming areas that would be most useful in his work.

Response: OJJDP appreciates learning that, of the 10 programming areas presented for consideration in the Program Plan, two—''blueprint'' program development and prevention and treatment programs for status offenders—would best serve the writer's needs.

In response to the writer's description of his truancy program, OJJDP acknowledged truancy as a major problem in this country that negatively influences the future of youth and costs taxpayers thousands of dollars. OJJDP is in the process of evaluating truancy reduction projects in eight demonstration sites: Athens, GA; Contra Costa, CA; Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. The purpose of the evaluation is to determine how community collaboration can impact truancy reduction and lead to systemic reform and assist OJJDP in the development of a community collaborative truancy reduction program model.

Most of OJJDP's funding is not provided under Parts C and D, but is distributed to the States and territories through our Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP referred the writer to his State Juvenile Justice Specialist to explore these possible sources of funding.

Comment: The program coordinator of a court evaluation unit wrote in support of three of the proposed priority areas: developing and studying programs addressing female offenders, developing prevention and treatment programs for status offenders, and developing and evaluating model practices regarding the efficacy of delinquency and dependency courts. The writer also noted that ''prevention and initial treatment is often a less costly approach to addressing delinquent behavior.''

Response: OJJDP appreciates learning of the writer's choice of priority program areas and strongly agrees with the observation about the cost-effectiveness of prevention and initial treatment.

Comment: The domestic violence coordinator at a county agency wrote that OJJDP needs to more directly address the problem of gender violence, specifically male to female violence, and to include school violence programs that consider the violence directed at girls, not just gang or gun violence. The writer also stated that ''young men are assaulting others in their families, but especially their mothers.'' It was noted that curriculums and responses that address domestic/dating violence by young men are beginning to be developed in the writer's county.

Response: OJJDP shares the writer's concern about violence perpetrated against female adolescents, particularly in light of research that indicates the median age at which girls report first becoming victims of sexual assault is 13. In response to this concern, OJJDP has awarded funds to Greene, Peters, and Associates of Nashville, TN, to foster comprehensive gender-specific programming for female juvenile offenders and girls at risk of offending, with work in this area including attention to the critical issue of victimization. The grantee also will provide training and technical assistance to help policymakers, service providers, detention workers, educators, service providers, parents, and community leaders address the complex needs of female adolescents who are at risk for delinquent behavior.

OJJDP is supporting several school-based programs that address problems of interpersonal violence and promote peaceful resolution. The National Center for Conflict Resolution Education in Urbana, IL, and the National Resource Center for Safe Schools in Portland, OR, are working with schools to teach students alternatives to violence, including date violence. The National Hate Crime Prevention Center in Newton, MA, is examining the complexities of gender violence in its trainings with domestic violence and law enforcement personnel.

OJJDP is also a collaborator with the National Advisory Council on Violence Against Women. The Council is charged with designing a national agenda on violence against women. When completed, this document will serve as a call to action and a guide to specific strategies to end violence against women and girls. OJJDP will continue to give priority to this area of activity.

Comment: The president and CEO of a mental health organization wrote that it is important for OJJDP to continue to promote evidence-based programs and would like OJJDP to take a greater leadership role in contradicting punitive measures and policies that do not work. The writer also stated that his organization would like OJJDP to decrease its emphasis on programs addressing a small number of serious and violent offenders and concentrate more on prevention of delinquency and early intervention with at-risk youth. The writer indicated OJJDP's investment in reducing child abuse, neglect, and dependency seems inadequate, particularly among girls, but was pleased about the focus on mental health. Other areas the writer supported for potential new funding were studying and developing programs that address female offenders, prevention and treatment programs for status offenders, and expansion of blueprint programs. This individual questioned why OJJDP would fund a program to reduce lead and environmental hazards based on the scope of the mission of OJJDP and suggested that the focus should be broadened to address the relationship between health status and delinquency. Other thoughts included concerns that efforts be closely coordinated, that treatment should not be viewed as a sanction, and that OJJDP is not focusing enough attention on the overrepresentation of minority youth in the juvenile justice system, while focusing too much on gang prevention and suppression. The letter listed four ''unaddressed'' or ''insufficiently addressed'' areas: a focused effort to evaluate and replicate promising community-based models, the prevalence of violence exposure and trauma among justice system-involved youth, conditions of confinement issues for youth with mental health and other treatment needs, and an emphasis on family outreach and meaningful inclusion in the juvenile justice system.

Response: OJJDP appreciates the writer's comments concerning where OJJDP's program emphasis should lie as it provides the kind of feedback necessary for sound decisionmaking. OJJDP noted that the writer's comments also highlight the ever-present challenge of balancing resources among competing needs while addressing the continuum of juvenile justice and delinquency prevention needs.

OJJDP acknowledged the writer's support for new programming in the areas of female offenders and replication of the ''Blueprints'' programs. With regard to his inquiry about the inclusion of ''the reduction of lead and environmental hazards'' in the 10 areas proposed for consideration, OJJDP responded that this area is consonant with the Office's strong emphasis on prevention activities. This Administration has aggressively pursued interagency partnerships in crossover areas of interest, and it is clear that the effects of elevated levels of lead in the bloodstream can cause children to suffer from physical, neurobiological, and cognitive problems that may lead to aberrant behavior, including aggression and delinquency.

OJJDP is committed to promoting research-based programs that demonstrate a positive impact on the lives of at-risk and delinquent youth and their families. This commitment extends to all of the Office's work, including those projects in the area of mental health. This area has gained increasing emphasis in recent years, concomitant with an increasing recognition of the interconnections among mental health, substance abuse, and juvenile justice.

In FY 2000, OJJDP will be funding several efforts in the area of mental health. OJJDP is pleased to support an update of the 1992 monograph, Responding to the Mental Health Needs of Youth in the Juvenile Justice System. The 1992 document remains the single-most comprehensive source of information on issues related to the mental health needs of youth in the juvenile justice system, but a new publication is needed to capture the progress and innovation that has occurred during the past 8 years. In addition, OJJDP is supporting a project to review the issue of screening and assessment in the juvenile justice system. The goal is to determine what instruments and models are currently in use, identify their strengths and weaknesses, and produce recommendations regarding best practices and future research needs.

OJJDP is also sponsoring basic research to identify the prevalence of mental health and substance abuse disorders in a large population of detained youth in Cook County, Illinois. In addition to prevalence rates, this study will explore service needs and service provision for this population. In combination with a similar study in New York City, this research may provide the clearest evidence yet of the level of unmet mental health needs among youth in the juvenile justice system. Another project, supported through an interagency agreement with the National Institute of Mental Health, is examining the connections between different types of treatment for attention deficit/hyperactivity disorder (a known risk factor for delinquency) and youth's later contact with the juvenile justice system.

Finally, OJJDP is in the midst of planning a major mental health demonstration project, which is still in the developmental stages and which will be highly dependent on future funding levels. However, the goal of this project will be to develop a comprehensive model for delivering mental health services to youth at all points in the juvenile justice system, from intake to aftercare. Subsequently, this comprehensive model would be implemented and evaluated at diverse sites, to determine its ability to meet the mental health needs of youth in the juvenile justice system.

All the writer's comments, including suggestions of four unaddressed or insufficiently addressed areas, will be considered in the planning process for FY 2000 and beyond.

Comment: The associate superintendent of public schools wrote to discuss her collaborative work with the State department of juvenile justice. As part of a pilot program, probation officers were placed in a cluster of schools to provide assistance and support in preventing violence. The writer believes that ''this program has had a significant influence in assisting delinquency reduction in the community'' and therefore should be carefully considered as policy decisions are made regarding future funding.

Response: OJJDP commends the collaborative efforts between the Prince Georges County Public Schools and the State of Maryland Department of Juvenile Justice. OJJDP acknowledged that the work of these two agencies in providing a seamless mesh of services to an at-risk population has become a statewide model for Maryland's Spotlight on Schools initiative. OJJDP is pleased to learn that this program has had a significant influence in assisting in delinquency reduction in the community.

Most of OJJDP's funding is not provided under Parts C and D, but is distributed to the States and territories through our Formula Grants, Challenge, and Title V (Community Prevention) programs. OJJDP referred the writer to the Juvenile Justice Specialist in her State to explore these possible sources of funding

Comment: The director of research and development in a law enforcement agency wrote in support of all of OJJDP's proposed areas as critical issues, with attention to what works and guidelines for replication. The writer indicated that improving the juvenile sanctioning system is of key importance and that development and implementation of transition programs for juvenile offenders is critical. It would be useful to have a focus on understanding juvenile crime trends, particularly if applied research is part of the methodology. The individual wrote that OJJDP should continue to encourage, if not mandate, collaboration with community organizations as well as the development of a continuum of services. The writer also stated that ''the need for training and technical assistance for public and community organizations and service providers is paramount,'' urging OJJDP to include a training component with additional support in the development and implementation of local initiatives.

Response: OJJDP appreciates the writer's support for all 10 program areas and acknowledged her assessment that improving the juvenile sanctioning system is of key importance. In response to the writer's comment about the need for useful and timely information to help law enforcement agencies understand the ''whys'' behind juvenile crime trends, OJJDP sent a copy of the recently published, Juvenile Offenders and Victims: 1999 National Report. The National Report is the most comprehensive and up-to-date source of information about juvenile crime, violence, and victimization and about the response of the juvenile justice system to these problems.

OJJDP agrees with the writer's position on the need for collaboration between community and resident organizations, the development of a continuum of services, and training and technical assistance. The Office has been pleased by the positive response from the field about the work already under way in these areas as part of OJJDP's ongoing programs and intends to continue to promote them.

Introduction to Fiscal Year 2000 Program Plan

In administering the discretionary grants program under Parts C and D of Title II, OJJDP has identified four goals as the major elements of a sound policy that ensures public safety and security while establishing effective juvenile justice and delinquency prevention programs. Achieving these goals, which are discussed below, is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

• OJJDP promotes delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.

• OJJDP seeks to improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.

• OJJDP supports efforts in the area of corrections, detention, and community-based alternatives to preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders that provide developmentally appropriate, culturally competent mental health and other critical services.

• OJJDP seeks to support law enforcement, public safety, and other justice agency efforts to prevent juvenile delinquency, intervene in the development of chronic delinquent careers, and collaborate with the juvenile justice system to meet the needs of dependent, neglected, and abused children, children who need mental health interventions, and children with disabilities.

In 1993, OJJDP published its Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, which set forth a research-based comprehensive approach for addressing the problems of juvenile crime and victimization and for achieving its program goals. The Comprehensive Strategy was developed to assist States and local communities in preventing at-risk youth from becoming serious, violent, and chronic juvenile offenders and in crafting a practical response to those who do. Over the past few years, OJJDP has tested and refined the prevention and graduated sanctions components of the Comprehensive Strategy. In 1996, OJJDP began assisting three pilot sites to formulate the Comprehensive Strategy plans at the local level. Lessons learned from those sites are being used in eight States to implement a strategic planning and implementation process through State partnerships with up to six local jurisdictions that are developing and implementing their own comprehensive strategies.[2]

This Final Plan also supports the Coordinating Council's 1996 National Juvenile Justice Action Plan, which grew out of the Comprehensive Strategy. This Action Plan, which the Coordinating Council is currently updating, provides eight objectives to reduce juvenile violence and describes ways to meet these objectives. Together, the Comprehensive Strategy and the Action Plan constitute a sound strategy for translating research findings and innovative programs into action.

Continuation Programs

OJJDP organizes its proposed programs under four broad categories that reflect its program goals and the principles of the Comprehensive Strategy. The following summaries briefly describe some of the types of activities that will receive continuation funding in each category.

Public Safety and Law Enforcement. Eight programs related to the important public policy issue of proliferating youth gangs are a major focus of OJJDP's proposals in this category. The programs range from demonstrations and replication of models to technical assistance and from evaluation to data collection and analysis. Funds will also be provided to a partnership between law enforcement and mental health services agencies to continue school-based activities and efforts to address the effects on children of exposure to domestic violence. Two programs deal with a problem of increasing public concern, gun violence. An evaluation is looking at the effect of transferring the responsibility for child protective investigations to law enforcement agencies.

Delinquency Prevention and Intervention. OJJDP will fund a range of programs that focus on reducing risk factors and increasing protective factors in children's lives. The types of programs include demonstrations, pilots, and replication of model programs; outreach; studies and evaluations; and training and technical assistance. Beginning with early programs such as prenatal nurse home visitation, OJJDP's delinquency prevention and intervention efforts feature arts programs for at-risk youth and for those in detention and corrections facilities; programs that assess the role of alcohol, illegal drugs, mental health problems, and learning disorders in juvenile delinquency and programs that study effective interventions for these risk factors. Funding will also be provided for programs to reduce truancy and keep students from dropping out of school and to evaluate those efforts, conflict resolution programs, programs that discourage violence, and programs that provide opportunities for positive development and promote public awareness of effective solutions to juvenile crime.

Strengthening the Juvenile Justice System. In this category, OJJDP will support efforts to develop comprehensive approaches to juvenile justice and delinquency prevention, including programs designed to reform juvenile justice systems in specific locations. Research-based guidance will be provided to States and others to improve juvenile justice services for students with disabilities. Some programs attempt to increase youth's accountability for their behavior and to prevent violence, while others seek to improve the quality of youth's legal representation and the equity and efficiency of the treatment of youth (including girls and minorities) at all points within the juvenile justice system, including points where the justice and mental health systems intersect and the time when youth return to the community from residential facilities. In addition, OJJDP will fund programs focusing on providing the information base necessary for sound policymaking. Examples include censuses and surveys of juveniles in facilities and on probation, an accurate program directory for use in the censuses and surveys, and a data analysis project.

Child Abuse and Neglect and Dependency Courts. Three programs fall within this category: Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency, its national evaluation, and a research program focusing specifically on the issue of child neglect.

Overarching. In addition to the activities in the four categories described above, OJJDP supports programs in a broader, overarching category. These are programs with significant elements common to more than one of the other four categories. Among the overarching programs is a major longitudinal study of the causes and correlates of delinquency, which is also providing an opportunity for an

[2] For more information about the Comprehensive Strategy, readers can request a copy of OJJDP Fact Sheet No. 9883, An Update on the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, by calling the Juvenile Justice Clearinghouse at 800–638–9736. Additional information is available from the Comprehensive Strategy program section of OJJDP's Web site at www.ojjdp.ncjrs.org/strategy/index.html.

examination of the intergenerational transmission of antisocial behavior. School violence is addressed by a university-based consortium and by a national resource center. One initiative is assisting six communities in implementing comprehensive programs to reduce youth violence and delinquency. OJJDP will continue to fund a crime prevention center whose tasks include investigating the reasons for the overrepresentation of minorities in the Texas juvenile justice system. Finally, national-level statistical support, training and technical assistance programs, and a clearinghouse are included in the overarching category, as are an OJJDP management evaluation contract and telecommunications assistance.

Descriptions of the specific programs in each of the five categories follow the discussion of new programs.

New Programs

Because the Proposed Plan was published before the FY 2000 appropriation was enacted, possible new programming was discussed only in the most general terms with descriptions of 10 broad areas in which new programs might be funded in FY 2000. The public was asked to comment on the proposed areas, which are listed below.

1. Improving the Juvenile Sanctioning System

2. Developing and Studying Programs Addressing Female Offenders

3. Monitoring and Understanding the ''Whys'' Behind Juvenile Crime Trends

4. Developing Blueprint Programs Through Replication and Evaluation

5. Replicating Effective Juvenile Delinquency Prevention and Treatment Program Models on Native American Tribal Lands and in Alaskan Native Communities

6. Developing and Evaluating Model Practices Regarding the Efficacy of Delinquency and Dependency Courts

7. Reducing Lead and Environmental Hazards

8. Addressing the Problem of Juvenile Sex Offending

9. Developing Prevention and Treatment Programs for Status Offenders

10. Supporting Field-Initiated Research and Evaluation Programs

It appears that the funding available to OJJDP for this fiscal year limits its ability to support new programming. Information regarding the FY 2000 appropriation, feedback from the juvenile justice field, other public comments on the Proposed Plan, and staff review have resulted in a narrowing down and refinement of the 10 proposed priority areas. Final determination of all FY 2000 programs will depend, however, on the completion of the review of congressional program priorities for OJJDP and funding availability.

OJJDP will give priority to funding two new program areas: improving the juvenile sanctioning system and improving the response to juvenile sex offenders. If additional monies become available or interagency agreements can be negotiated, other areas of interest that OJJDP would prioritize for funding include the following: evaluation of model dependency courts; survey of correctional education; a national survey of youth; and reducing lead and environmental hazards.

In addition, depending on availability of funds, the Office intends to enhance or restructure existing efforts to better focus its work in the following areas: girls in the juvenile justice system; disproportionate minority confinement; hate crime prevention; gang-free schools and communities initiatives; State and local juvenile justice policymaking; the engagement of faith-based organizations; ''Blueprint'' program replication and evaluation; detention and corrections programming; and monitoring and understanding the ''whys'' behind juvenile crime trends.

Two additional points should be made concerning new programming listed for consideration in the Proposed Plan:

First, consistent with the public comments received, OJJDP is cognizant of the need to give the States good guidance on the handling of status offenders. The Office is currently conducting work around underage drinking, family strengthening, runaways and missing youth, and truancy programs. In addition, OJJDP will explore possible ways to gather and disseminate the best information available about status offending, including training and technical assistance support through its new training and technical assistance provider.

Second, it may be possible to support some field-initiated research in FY 2000 by identifying funding streams other than those that support programs under Parts C and D of the JJDP Act (e.g., Juvenile Accountability Incentive Block Grants).

Those who commented on the Proposed Plan and other interested parties should watch for program announcements on OJJDP's Web site (www.ojjdp.ncjrs.org—click on ''Grants & Funding'') during the coming months to learn of any new programming that may be funded in FY 2000. Readers can also obtain this information by calling the Juvenile Justice Clearinghouse (800–638–8736) or subscribing to OJJDP's electronic newsletter, JUVJUST, by sending an e-mail message to *listproc@ncjrs.org*, leaving the subject line blank, and typing *subscribe juvjust your name* in the body of the message.

Fiscal Year 2000 Programs

The following are the programs that OJJDP intends to continue to fund in FY 2000. These programs are listed alphabetically and summarized within each of the five categories: Overarching, Public Safety and Law Enforcement, Strengthening the Juvenile Justice System, Delinquency Prevention and Intervention, and Child Abuse and Neglect and Dependency Courts.

With regard to implementation sites and other descriptive data and information, program priorities within each category will be determined based on grantee performance, application quality, fund availability, and other factors.

As part of the appropriations process, Congress identified a number of programs for priority funding consideration by OJJDP with regard to the grantee(s), the amount of funds, or both. These programs, which are listed below, are not included in the program descriptions.

Achievable Dream After School Program
Catholic Charities, Inc., Louisville, Kentucky
Center on Crimes/Violence Against Children
Culinary Arts for At-Risk Youth
Innovative Partnerships for High Risk Youth
Juvenile Justice Tribal Collaboration and Technical Assistance
Kids With A Promise Program
L.A. Best Youth Program
L.A. Dads/Family Programs
L.A. Bridges After School Program
Lincoln Action Programs-Youth Violence Alternative Project
Low Country Children's Center Program
Mecklenburg County's Domestic Violence HERO Program
Milwaukee Safe and Sound Program
Mount Hope Center
National Association of State Fire Marshals-Juvenile Firesetters Initiative
National Council of Juvenile and Family Court Judges
Law-Related Education
No Workshops * * * No Jump Shots Program
Operation Quality Time Program
Parents Anonymous
Rio Arriba County, New Mexico, After School Program
Suffolk University Center for Juvenile Justice

University of Missouri-Kansas City Juvenile Justice Research Center
University of Montana Juvenile After School Program
Vermont Association of Court Diversion
Youth Crime Watch Initiative of Florida
Youth Challenge Program

In addition, OJJDP is directed to examine each of the following proposals, provide grants if warranted, and report to the Committees on Appropriations on both the House and Senate on its intentions for each proposal.

At Risk Youth Program in Wausau, Wisconsin
Consortium on Children, Families, and the Law
Hawaii Lawyers Care Na Keiki Law Center
Juvenile Justice program in Kansas City, Missouri
Learning for Life Program
New Mexico Cooperative Extension Service 4–H Youth Development Program
OASIS
Oklahoma State Transition and Reintegration Services (STARS)
Rapid Response Program, Washington/Hancock County, Maine
St. Louis City Regional Violence Prevention Initiative
University of South Alabama's Youth Violence Project

Fiscal Year 2000 Program Listing

Overarching

Coalition for Juvenile Justice
Hamilton Fish National Institute on School and Community Violence
Insular Area Support
Juvenile Justice Clearinghouse
Juvenile Justice Statistics and Systems Development
National Resource Center for Safe Schools
National Training and Technical Assistance Center
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
SafeFutures: Partnerships To Reduce Youth Violence and Delinquency
Technical Assistance for State Legislatures
Telecommunications Assistance
Texas Juvenile Crime Prevention Center at Prairie View A&M University—Enhancing Personal Training and Understanding Minority Overrepresentation in the Juvenile Justice System
Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

Public Safety and Law Enforcement

Child Development-Community-Oriented Policing (CD–CP)
Education on Gun Violence and Safety
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention; Intervention, and Suppression Program
Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program
Evaluation of the Rural Gang Initiative
Evaluation of the Transfer of Responsibility for Child Protective Investigations to Law Enforcement Agencies
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
Juvenile Justice Law Enforcement Training and Technical Assistance Program
National Youth Gang Center
Partnerships To Reduce Juvenile Gun Violence
Rural Gang Initiative Demonstration Sites
Technical Assistance to Gang-Free Schools and Communities Initiatives
Training and Technical Assistance for the Rural Gang Initiative

Delinquency Prevention and Intervention

America's Promise: Enhanced Collaboration
Arts and At-Risk Youth
Arts Programs for Juvenile Offenders in Detention and Corrections
Assessing Alcohol, Drug, and Mental Health Disorders
Communities in Schools—Federal Interagency Partnership
A Demonstration Afterschool Program
Diffusion of State Risk- and Protective-Factor Focused Prevention
Evaluation of the Truancy Reduction Program
Hate Crime
Intergenerational Transmission of Antisocial Behavior Project
Investing in Youth for a Safer Future—A Public Education Campaign
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Center for Conflict Resolution Education
Partnerships for Preventing Violence
Proactive Youth Program
Professional Development in Effective Classroom and Conflict Management
Risk Reduction Via Promotion of Youth Development
Strengthening Services for Chemically Involved Children, Youth, and Families
Training and Technical Assistance Program for the Arts Programs for Juvenile Offenders in Detention and Corrections Initiative
Truancy Reduction Demonstration Program

Strengthening the Juvenile Justice System

Balanced and Restorative Justice (BARJ) Training Project
Building Blocks for Youth
Census of Juveniles in Residential Placement
Center for Students with Disabilities in the Juvenile Justice System
Circles of Care Program
Community Assessment Center
Comprehensive Children and Families Mental Health Training and Technical Assistance
Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Evaluation of the Department of Labor's Education and Training for Youthful Offenders Initiative
Evaluation of the Intensive Community-Based Aftercare Program
Evaluation of Teen Courts
Helping Communities To Promote Youth Development
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Juvenile Defender Training, Technical Assistance, and Resource Center
The Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Linking Balanced and Restorative Justice and Adolescents (LIBRA)
Longitudinal Study To Examine the Development of Conduct Disorder in Girls
National Juvenile Justice Data Analysis Project
National Juvenile Justice Program Directory
The National Longitudinal Survey of Youth 97
Performance-Based Standards for Juvenile Correction and Detention Facilities
San Francisco Juvenile Justice Local Action Plan—Delancy Street Initiative
Survey of Juvenile Probation
Technical Assistance to Native American Tribes and Alaskan Native Communities
TeenSupreme Career Preparation Initiative
Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program
Nurse Home Visitation

Research on Child Neglect
Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

Overarching

Coalition for Juvenile Justice

This project supports the Coalition in its efforts to meet the statutory mandates through the development of a technical assistance capability that provides training, technical assistance, and information to the State Juvenile Justice Advisory Groups. This will be accomplished through a series of regional training and information workshops and a national conference designed to address the needs of the membership of the Coalition.

This project will be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications will be solicited in FY 2000.

Hamilton Fish National Institute on School and Community Violence

The Institute, with assistance from OJJDP, was founded in 1997 to serve as a national resource to test the effectiveness of school violence prevention methods and to develop more effective violence prevention strategies. The Institute's goal is to determine what works and what can be replicated to reduce violence in America's schools and their immediate communities. The Institute works with a consortium of seven universities whose key staff have expertise in adolescent violence, criminology, law enforcement, substance abuse, juvenile justice, gangs, public health, education, behavior disorders, social skills development and prevention programs. The George Washington University develops and tests violence prevention strategies in collaboration with the following universities: Eastern Kentucky University, Florida State University, Morehouse School of Medicine, Syracuse University, University of Oregon, and University of Wisconsin-Milwaukee.

This project will be implemented by the current grantee, George Washington University. No additional applications will be solicited in FY 2000.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the juvenile justice community, legislators, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and administers several electronic information resources. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation.

This program will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2000.

Juvenile Justice Statistics and Systems Development Program

The Juvenile Justice Statistics and Systems Development (SSD) Program was competitively awarded in 1990 to the National Center for Juvenile Justice (NCJJ) to improve national, State, and local statistics on juveniles as victims and offenders. The SSD project has traditionally consisted of three tracks of work: National Statistics, Dissemination, and Systems Development. In FY 2000, NCJJ will continue many activities under the first two tracks, including maintaining an extensive library of data files, producing Easy Access software packages and the Web-based OJJDP Statistical Briefing Book, and continuing to service requests for juvenile justice information. In FY 2000, additional funding from OJJDP will also enable NCJJ to enhance activities under the Systems Development track of the project.

To meet the challenge of managing the cases of youth within their jurisdiction effectively and efficiently, juvenile court administrators and judges need ready access to information that will support the operation, management, and decisionmaking of the full-service juvenile court system. Knowledge and decisionmaking (which should be the hallmark of every juvenile justice system) requires not just the collection of data, but the collaboration of the community leaders who will give meaning to the data. This is the focus of the forthcoming book, Juvenile Justice With Eyes Open, which will be published in FY 2000 as part of the Statistics and Systems Development Project (Systems Development Track). Also in FY 2000, NCJJ will use the principles outlined in this publication to develop and field-test an approach that local jurisdictions can employ to systematically identify and then fulfill their local information needs. This includes training local juvenile justice leaders in the rational decisionmaking model (RDM) as a design tool for management information systems; developing data specifications for an effective information system to meet operational, management, and research needs; identifying data needs from collateral service providers and data that will be of use to collaterals; and modeling agreements and protocols with collateral service providers to share case-level and/or aggregate data.

This project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 2000.

National Resource Center for Safe Schools

Since 1984, OJJDP and the U.S. Department of Education have provided joint funding to promote safe schools. This work has focused national attention on cooperative solutions to problems that disrupt the educational process. Because an estimated 3 million incidents of crime occur in America's schools each year, it is clear that this problem continues to plague many schools, threatening students' safety and undermining the learning environment. With FY 1998 funding, the U.S. Department of Education's Safe and Drug-Free Schools Program and OJJDP established the National Resource Center for Safe Schools under a 3-year project period. This project expanded the scope and provision of previous training and technical assistance to communities and school districts across the country. The grantee is working to help schools develop and put in place comprehensive safe school plans. It does this through onsite training and consultation to schools and communities, by creating and distributing resource materials and tools, through Web-based information services, and by partnering with State-level agencies to build State capacity to assist local education agencies. Through the inclusion on the project's Advisory Committee of representatives of Hamilton Fish National Institute on School and Community Violence and

other school-related training and technical assistance providers, this project has developed training materials and information resources based on the latest research findings on effective programs and best practices.

The project will continue to be implemented by the current grantee, Northwest Regional Educational Laboratory. No additional applications will be solicited in FY 2000.

National Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award. NTTAC serves as a national training and technical assistance clearinghouse, inventorying and coordinating the integrated delivery of juvenile justice training and technical assistance resources and establishing a database of these resources.

NTTAC's funding in FY 1996 provided services in the form of coordinated technical assistance support for OJJDP's SafeFutures and gang program initiatives, continued promotion of collaboration between OJJDP training and technical assistance providers, developed training/technical assistance materials, and completed and disseminated the first OJJDP Training and Technical Assistance Resource Catalog.

In FY 1997, NTTAC disseminated a second, updated Training and Technical Assistance Resource Catalog; created a Web site for the Center and a ListServe for the Children, Youth and Affinity Group; held three focus groups on needs assessments; and coordinated and provided 38 instances of technical assistance in conjunction with OJJDP's training and technical assistance grantees and contractors.

In FY 1998, NTTAC finalized the jurisdictional team training and technical assistance packages on critical needs in the juvenile justice system, updated the resource catalog, facilitated the annual OJJDP training and technical assistance grantee and contractor meeting, continued to update the repository of training and technical assistance materials and the electronic database of training and technical assistance materials, and continued to respond to training and technical assistance requests from the field.

In FY 1999, NTTAC was operated by OJJDP staff with the support of the Juvenile Justice Clearinghouse, providing clearinghouse services and maintenance of the 800 number. The Fourth Grantee-Contractor meeting was conducted by OJJDP staff in Chicago and the training and technical protocols developed in 1998 were discussed for final issue. These are being finalized and will be disseminated in FY 2000. A contract was awarded to Caliber Associates to continue implementation of the Center.

This project will be implemented by the current grantee, Caliber Associates. No additional applications will be solicited in FY 2000.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1999 to Caliber Associates for a period of 3 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. Evaluations may be conducted on OJJDP-funded programs and on other programs designed to prevent and treat juvenile delinquency. The time and cost of each evaluation depends on program complexity, availability of data, and purpose of the evaluation. Because the purpose of many evaluations is to inform management decisions, the completion of an evaluation and submission of a report may be required in a specific and, often, short time period.

This program will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in FY 2000.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

This contract has been competitively awarded since the mid-1980's when OJJDP identified the need for technical assistance support in carrying out its mission. The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates the peer review process for OJJDP grant applications and grantee reports, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards.

This contract will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2000.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. These projects are designed to improve the understanding of serious delinquency, violence, and drug use by examining how youth develop within the context of family, school, peers, and community. The three sites engage in both collaborative and site-specific research. From the beginning, the three research teams have worked together to ensure that certain core measures are identical across the sites. This strengthens the findings from these projects by allowing for replications of findings in individual sites and enabling cross-site analyses.

Results from the study have been used extensively in the field of juvenile justice and contributed significantly to the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other program initiatives. Over the years, findings from the Causes and Correlates research have been presented in a number of OJJDP Bulletins and Fact Sheets. In an effort to make these important findings increasingly accessible to the public, OJJDP recently added to its Web site a subpage devoted to the Program of Research on the Causes and Correlates of Delinquency. This subpage, under the ''Programs'' topic of the OJJDP Web site, includes descriptions of the individual projects and a bibliography of all the publications resulting from these projects.

In the upcoming year, the Causes and Correlates projects will continue collaborative and site-specific analyses of the data. Topics for upcoming reports will include defining characteristics and predictors of very young offending, delinquency and victimization at school, and the causes of violence in disadvantaged neighborhoods. In addition, there are plans for a meeting to bring together all the Federal agencies that have contributed to the Program of Research on the Causes and Correlates of Delinquency to discuss future plans and directions for these projects.

This program will be implemented by the current grantees. No additional applications will be solicited in FY 2000.

Safe Futures: Partnerships To Reduce Youth Violence and Delinquency

OJJDP is awarding grants of up to $1.4 million annually to each of six communities for a 5-year project period that began in FY 1995, to assist in implementing comprehensive community programs designed to reduce youth violence and delinquency. Boston, MA; Contra Costa County, CA; Fort Belknap, MT (tribal site); Imperial County, CA (rural site); St. Louis, MO; and Seattle, WA, were competitively selected to receive awards under the SafeFutures program on the basis of their substantial planning and progress in community assessment and strategic planning to address delinquency.

SafeFutures seeks to prevent and control youth crime and victimization through the creation of a continuum of care in communities. This continuum enables communities to be responsive to the needs of youth at critical stages of their development by providing an appropriate range of prevention, intervention, treatment, and sanctions programs.

Each of the six sites will continue to provide a set of services that builds on community strengths and existing services and fills in gaps within their existing continuum. These services include family strengthening; after school activities; mentoring; treatment alternatives for juvenile female offenders; mental health services; day treatment; graduated sanctions for serious, violent, and chronic juvenile offenders; and gang prevention, intervention, and suppression. During the fourth year of the project, specific attention will be given to care coordination and program sustainability.

A national evaluation is being conducted by the Urban Institute to determine the success of the initiative and track lessons learned at each of the six sites. OJJDP has also committed a cadre of training and technical assistance (TTA) resources to SafeFutures through a full-time TTA coordinator for SafeFutures and a host of partner organizations committed to assisting SafeFutures sites.

SafeFutures activities will be carried out by the six current grantees. No additional applications will be solicited in FY 2000.

Technical Assistance for State Legislatures

Since FY 1995, OJJDP has awarded annual grants to the National Conference of State Legislatures to provide relevant, timely information on comprehensive approaches in juvenile justice to aid State legislators in improving State juvenile justice systems. Nearly every State has enacted, or is considering, statutory changes affecting the juvenile justice system. This project has helped policymakers understand the ramifications and nuances of juvenile justice reform. The grant has improved capacity for the delivery of information services to legislatures. The project also supports increased communication between State legislators and State and local leaders who influence decisionmaking regarding juvenile justice issues.

The project will be implemented by the current grantee, the National Conference on State Legislatures. No additional applications will be solicited in FY 2000.

Telecommunications Assistance

OJJDP uses information technology and distance training to facilitate access to information and training for juvenile justice professionals. This cost-effective medium enhances OJJDP's ability to share with the field salient elements of the most effective or promising approaches to various juvenile justice issues. In FY 1995, OJJDP awarded a competitive grant to Eastern Kentucky University (EKU) to produce live satellite teleconferences. To date, EKU has produced 21 telecasts. In FY 1999, OJJDP continued the cooperative agreement with EKU to provide program support and technical assistance for a variety of information technologies and to explore linkages with key constituent groups to advance mutual information goals and objectives. During the past year, EKU has experimented with cybercasting ''live'' satellite videoconferences on the Internet.

This project will be implemented by the current grantee, Eastern Kentucky University. No additional applications will be solicited in FY 2000.

Texas Juvenile Crime Prevention Center at Prairie View A&M University—Enhancing Personal Training and Understanding Minority Overrepresentation in the Juvenile Justice System

This 3-year project was initially funded in FY 1998. The purpose of the program was to create the Texas Juvenile Crime Prevention Center at Prairie View A&M University (the Center) and to have the Center undertake three initial tasks. These tasks included the development of a master's degree in Forensic Psychology, the development of a training institute for the coordinators of 13 community youth development projects, and a study to investigate the factors contributing to the disproportionate representation of minority youth in the Texas juvenile justice system.

The master's degree in Forensic Psychology includes a minimum of 30 semester hours, exclusive of thesis. The development of the curriculum and an instrument to test its effectiveness will occur in the first 2 years of the grant. The courses for the master's degree will be taught in the second and third years with the testing of the effectiveness of the curriculum being completed by the end of the third year. The objectives of this curriculum development are to increase the understanding, knowledge, and skills of in-service professionals regarding juvenile behaviors; to increase the number of qualified professionals working with juvenile offenders; and to decrease the number of juveniles who become repeat offenders.

The training institute at Prairie View A&M University (PVAMU) will focus training on the coordinators of the Texas Department of Protective and Regulatory Services Community Youth Development Project. The 12 counties in Texas with the highest number of juvenile arrests were selected to design comprehensive approaches to support families and enhance the positive development of youth. PVAMU is offering the project coordinators program management and evaluation skills courses. Each year for 3 years an intensive 2-week course will be offered to the coordinators on managing and monitoring service delivery and basic research and evaluation skills development.

Funding in FY 2000 will allow PVAMU to implement and test the curriculum that has been developed in the first 2 years, hold a third 2-week seminar that develops skills in managing and monitoring services and basic research and evaluation skills of the youth development coordinators, and continue support for the study of the overrepresentation of minorities in the Waller County Juvenile Court.

The project will be implemented by the current grantee, the Texas Juvenile Crime Prevention Center at Prairie View A&M University. No additional applications will be solicited in FY 2000.

Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

OJJDP will continue funding for long-term training and technical assistance to the SafeFutures and Safe Kids/Safe Streets initiatives. This coordination effort builds local capacity for implementing and sustaining effective continuum-of-care and systems chance approaches in six SafeFutures and five Safe Kids/Safe Streets sites. Project activities include assessment, identification, and coordination of the implementation of training and technical assistance needs at each of the sites and the administration of cross-site training.

This program will be implemented by the current grantee, Patricia Donahue. No additional applications will be solicited in FY 2000.

Public Safety and Law Enforcement

Child Development–Community-Oriented Policing (CD–CP)

The Child Development–Community-Oriented Policing (CD–CP) program is an innovative partnership between the New Haven Department of Police Services and the Child Study Center at the Yale University School of Medicine that addresses the psychological burdens on children, families, and the broader community as children witness increasing levels of community violence. In FY 1993, OJJDP provided support to document Yale-New Haven's child-centered, community-oriented policing model. The model consists of interrelated training of police officers, consultation, and teaming mental health clinicians with law enforcement in intervening onsite with children and families who witness violence. OJJDP, with first-year support from the Office of Justice Programs' Bureau of Justice Assistance, funded a 3-year replication of the model in Buffalo, NY; Charlotte, NC; Nashville, TN; and Portland, OR. Other OJP components joined OJJDP in funding an expansion of CD–CP in FY 1998. This expansion moved the project into school-based activities and the area of addressing exposure to violence in domestic settings and will continue to do so in FY 2000.

This project will be continued by the current grantee, the Yale University School of Medicine, in collaboration with the New Haven Department of Police Services. No additional applications will be solicited in FY 2000.

Education on Gun Violence and Safety

OJJDP will continue partnering with the Bureau of Justice Assistance to support Education on Gun Violence and Safety. This project seeks to educate gunowners and parents about how to safely use and store guns and how to protect children from gun violence. Through a coordinated communications, education, grassroots, and media campaign, the project will reach gunowners and other caring adults with important information on preventing youth's illegal access to and unlawful use of guns. In FY 2000, based upon critical communications research with gunowners, the communications campaign will disseminate appropriate educational materials.

The program will be implemented by the current grantee, the National Crime Prevention Council and the Ad Council. No additional applications will be solicited in FY 2000.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP will continue funding this evaluation in FY 2000. Under a competitive cooperative agreement awarded in FY 1995, the evaluation grantee assisted the five program sites (Bloomington, IL; Mesa, AZ; Riverside, CA; San Antonio, TX; and Tucson, AZ) in establishing realistic and measurable objectives, documenting program implementation, and measuring the impact of this comprehensive approach. It has also provided interim feedback to the program implementors and trained the local site interviewers. The grantee will continue to gather and analyze data required to evaluate the program, monitor and oversee the quality control of data, provide assistance for completion of interviews, and provide ongoing feedback to project sites.

This project will be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications will be solicited in FY 2000.

Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program

This project began with a competitive award in FY 1997 to document and evaluate the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing gun violence involving juveniles. The Partnerships to Reduce Juvenile Gun Violence Program is being implemented in three sites: Baton Rouge, Louisiana; Oakland, California; and Syracuse, New York. The grantee, COSMOS Corporation, will complete data collection for the impact portion of this evaluation and submit a final report in the next year. In addition to working with the three Partnership sites, COSMOS Corporation completed work in FY 1998 on the Promising Strategies To Reduce Gun Violence Report. COSMOS will develop a training and technical assistance protocol based on its experience with the Partnership sites and the gun violence report. This training and technical assistance package will be used with additional communities across the country that are focused on reducing gun violence through a collaborative planning process.

This evaluation and training development will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 2000.

Evaluation of the Rural Gang Initiative

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 1999, four rural sites began conducting comprehensive assessments of their local gang problem and engaging in program design to implement the Comprehensive Gang Model. These sites are Elk City, OK; Glenn County, CA; Mt. Vernon, IL; and Longview, WA. The National Council on Crime and Delinquency (NCCD) is conducting case studies to document and analyze the 1-year community assessment and program planning efforts in the four sites. These case studies will contribute to the development of a model approach to assessment of community gang problems in rural areas. NCCD will also be developing an outcome evaluation design for sites that are funded to implement the model in subsequent years. FY 2000 funding will support the first year of the outcome evaluation.

This program will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2000.

Evaluation of the Transfer of Responsibility for Child Protective Investigations to Law Enforcement Agencies

In response to concerns about the increasing demands on public child welfare agencies, the safety of children, and the effectiveness of law enforcement and social service agencies to deliver critical services, the State of Florida has passed legislation that allows for the transfer of the entire responsibility for child protective investigations to a law enforcement agency. Currently, three counties in Florida are in various stages of

implementing this transfer of responsibility. This project will compare the outcomes in the three counties where responsibility is being transferred to the Sheriff's Office with three comparison counties in the State of Florida. The project will primarily be concerned with whether children are safer, whether perpetrators of severe child abuse are more likely to face criminal sanctions, and whether there are impacts on other parts of the child welfare system. Also, a thorough process evaluation will be conducted to describe and compare the implementation process across the three counties.

This project will be conducted by the School of Social Work at the University of Pennsylvania. No additional applications will be solicited in FY 2000.

Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. This program reflects the ongoing collaboration between OJJDP and the Boys & Girls Clubs to reduce problems of juvenile delinquency and violence. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at SafeFutures and OJJDP Comprehensive Gang sites, and other clubs and organizations through regional trainings and national conferences. In FY 1999, the Boys & Girls Clubs added as many as 30 new gang prevention sites, 5 new gang intervention sites, and at least 2 ''Targeted Reintegration'' sites where clubs work to provide services to youth returning to the community from juvenile correctional facilities to prevent them from returning to gangs and violence. The Boys & Girls Clubs of America will also hold a Delinquency and Gang Prevention Symposium in March 2000. A national evaluation of this program is being implemented by Public/Private Ventures.

This program will be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications will be solicited in FY 2000.

Juvenile Justice Law Enforcement Training and Technical Assistance Program

Over the past decade, alarming reports of youth violence have appeared with increasing frequency in publications and the news media. Law enforcement agencies across the Nation are responding to this sense of national emergency by changing many of their policies and practices to cope with juvenile crime and victimization.

The Juvenile Justice Law Enforcement Training and Technical Assistance Program examines adolescent violence in the United States both as a social phenomenon and a policy issue. The program covers the range of youth violence issues from crime statistics to new legislation. The program also sets forth comprehensive analysis of key areas of youth violence policy and practice: youth firearm possession and use, school violence and safety, youth-oriented community policing, gang and drug involvement, serious habitual offenders, multidisciplinary communitywide youth violence reduction strategies, police management of youth programs, tribal juvenile crime, and Chief Executive Officer responses to delinquency and violence.

Throughout the program, the core issues of youth violence are examined through an appropriate set of responses to youth violence that are consistent with effective police practice and a positive future for America's youth. In addition, key leaders from law enforcement, prosecution services, the courts, corrections, probation, and other juvenile justice agencies are offered information, materials, solutions to management issues, and technical assistance in the prevention and control of youth crime.

FY 1998 and 1999 funds supported the continuation of eight State, local, and tribal program workshops: The Chief Executive Officer Youth Violence Forum (CEO Forum); Managing Juvenile Operations (MJO); Gang, Gun, and Drug Policy; School Administrators for Effective Operations Leading to Improved Children and Youth Services (SAFE POLICY); Youth-Oriented Community Policing; Tribal Justice Training and Technical Assistance; the Serious Habitual Offender Comprehensive Action Program (SHOCAP); and the Youth Violence Reduction Comprehensive Action Program.

This program will be implemented by the current grantee, the International Association of Chiefs of Police under a cooperative agreement with OJJDP. No additional applications will be solicited in FY 2000.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response to America's gang problem. This response involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC). Competitively funded with FY 1994 funds to expand and maintain the body of critical knowledge about youth gangs and effective responses to them, NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC is also providing technical assistance for the Rural Gang Initiative planning and assessment phase. OJJDP will extend the NYGC project an additional year and provide FY 2000 funds to NYGC to (1) conduct more indepth analyses of the National Youth Gang Survey results that track changes in gang membership and gang-related crime, (2) produce timely information on the nature and scope of the youth gang problem, and (3) continue efforts to foster integration of gang-related items into other relevant surveys and national data collection efforts.

This program will be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications will be solicited in FY 2000.

Partnerships To Reduce Juvenile Gun Violence

OJJDP will award continuation grants to each of three competitively selected communities that initially received funds in FY 1997 to increase the effectiveness of existing youth gun violence reduction strategies by enhancing and coordinating prevention, intervention, and suppression strategies and strengthening linkages among community residents, law enforcement, and the juvenile justice system. Baton Rouge, LA; Oakland, CA; and Syracuse, NY, were selected to receive 3-year awards. The goals of this initiative are to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violent exchanges. A national evaluation currently under way will document the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing juvenile gun violence.

The Partnerships To Reduce Juvenile Gun Violence program will be carried out by the three current grantees, Baton Rouge, LA; Oakland, CA; and Syracuse, NY. No additional applications will be solicited in FY 2000.

Rural Gang Initiative Demonstration Sites

In FY 1999, OJJDP supported four rural communities (Elk City, OK; Glenn County, CA; Longview, WA; and Mount Vernon, IL) to conduct a comprehensive assessment of the local youth gang problem in these communities. Each site has collected relevant data from multiple sources, including police, schools, courts, and community residents, and has gathered various types of data, including gang crime data, data on the presence of risk factors for gang membership, community demographics, and community surveys and focus groups. Once data collection is complete, the communities will use these data in a comprehensive program planning process to adapt and implement the OJJDP Comprehensive Gang Model. In FY 2000, OJJDP will support these communities in the implementation of the OJJDP Comprehensive Gang Model. An independent evaluation of this effort will also be conducted, along with technical assistance through the National Youth Gang Center.

This initiative will be implemented by the four current grantees: Elk City, OK; Glenn County, CA; Longview, WA; and Mount Vernon, IL. No additional applications will be solicited for this initiative in FY 2000.

Technical Assistance to Gang-Free Schools and Communities Initiatives

In FY 1999, OJJDP began planning for a potential school-centered gang initiative and a multisite replication of the OJJDP Comprehensive Gang Model. In FY 2000, OJJDP will fund the National Youth Gang Center to provide technical assistance during the developmental stages of this initiative and during the implementation of these efforts in selected communities across the country. The National Youth Gang Center is currently providing technical assistance on OJJDP's model to communities involved in OJJDP's Rural Gang Initiative and to other OJJDP grantees.

OJJDP will provide a supplemental award to the National Youth Gang Center to provide the technical assistance. No new applications will be solicited in FY 2000.

Training and Technical Assistance for the Rural Gang Initiative

In FY 1998, OJJDP provided supplemental funding support to the National Youth Gang Center to provide training and technical assistance to demonstration sites under OJJDP's Rural Gang Initiative. In FY 2000, training and technical assistance will continue to be provided to those sites chosen to implement the OJJDP Comprehensive Gang model. Training and technical assistance will focus on adapting the OJJDP model to rural jurisdictions and on implementing the model in a theoretically sound manner. Assistance will be delivered through onsite visits, conferences, meetings, and other means such as telephone and electronic media.

This initiative will be implemented by the current grantee, the National Youth Gang Center. No additional applications will be solicited in FY 2000.

Delinquency Prevention and Intervention

America's Promise: Enhanced Collaboration

The Presidents' Summit for America's Future held in April 1997 in Philadelphia represented the first-ever call to action by all living Presidents on a social initiative to encourage concerned citizens, communities, and the business, nonprofit, and government sectors to work together to improve the lives of children in the United States. The goals of America's Promise, the 501.c.3 established by General Colin Powell in response to this summit, state that young people should have access to five fundamental resources that are necessary to maximize their potential: (1) An ongoing relationship with a caring adult (mentor, tutor, coach); (2) safe places and structured activities during nonschool hours to learn and grow; (3) a healthy start; (4) marketable skills through effective education; and (5) an opportunity to give back through community service. Hundreds of communities and organizations have made commitments to reaching these goals. OJJDP has been supporting those commitments through its various programs and initiatives over the past 2 years but now will commit funding support to America's Promise, to enhance the program's focus on volunteerism, and to support further coordination and expansion of existing community resources, service programs, and initiatives that address the needs of the Nation's children and youth.

The program will be implemented by America's Promise. No additional applications will be solicited in FY 2000.

Arts and At-Risk Youth

OJJDP will provide continuation funding for an afterschool and summer arts program that combines the arts with job training and conflict resolution skills. This project includes summer jobs or paid internships to enable youth to put into practice the job and conflict resolution skills they are learning. By combining the arts with practical life experiences, at-risk youth gain valuable insights into their own abilities and the possibilities that await them in the world of work if they continue to attend school, study, and graduate. The goal of this program is to prevent and reduce the incidence of juvenile delinquency, crime, and other problem behaviors (*e.g.*, substance abuse, teen pregnancy, truancy, and dropping out of school) in at-risk youth 14 to 17 years old by providing a multicomponent arts program that includes life skills training, the link between art and employment, and practical experiences in the workforce. In FY 1999, in collaboration with the Bureau of Justice Assistance, the Safe and Drug-Free Schools Program of the U.S. Department of Education, the National Endowment for the Arts, and the U.S. Department of Labor, OJJDP awarded grants to three competitively selected communities (Chicago, IL; Philadelphia, PA; and Tulsa, OK) to develop and implement this pilot demonstration program in the arts. The grantees are receiving training and technical assistance support through a provider selected by the National Endowment for the Arts and OJJDP.

This program will be implemented by the current grantees, Chicago, Philadelphia, and Tulsa. No additional applications will be solicited in FY 2000.

Arts Programs for Juvenile Offenders in Detention and Corrections

OJJDP will provide continuation support for arts programs for youth in juvenile detention centers and corrections facilities. This initiative is designed to increase opportunities to establish visual, performing, media, and literacy artist-in-residence programs in juvenile detention centers and corrections facilities. The corrections and detention sites are encouraging the development of these programs by convening interested arts organizations and juvenile justice agencies to provide training in arts program development to three competitively selected demonstration sites (Gainesville, TX; Riviera Beach, FL; and Rochester, NY) and three competitively selected enhancement sites (Bronx, NY; Seattle, WA; and Whittier, CA). The demonstration sites will develop and implement new arts-based programs for adjudicated youth, and the enhancement sites will demonstrate practices that have achieved sustainable programs. In addition to being required

to provide juvenile offenders in detention and corrections facilities with arts programming, sites also are required to develop collaborative arts programs for youth returning to their communities. The grantees are receiving training and technical assistance support through a provider selected by the National Endowment for the Arts and OJJDP.

This program will be implemented by the six current grantees. No additional applications will be solicited in FY 2000.

Assessing Alcohol, Drug, and Mental Health Disorders Among Juvenile Detainees

This project will supplement an ongoing National Institute of Mental Health longitudinal study assessing alcohol, drug, and mental health disorders among juveniles in detention in Cook County, Illinois. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees; (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (and they are back in the community or serving sentences); and (3) to study the development of dangerous and risky behaviors related to violence, substance use, and HIV/AIDS. The study is investigating how violence, drug use, and HIV/AIDS risk behaviors develop over time, what the antecedents of these behaviors are, and how these behaviors are interrelated. This project is unique because the sample is so large: it includes 1,833 youth from Chicago who were arrested and interviewed between 1996 and 1998. The sample is stratified by gender, race (African American, non-Hispanic white, Hispanic), and age (10–13, 14–17). Initial interviews have been completed, and extensive archival data (arrest and incarceration history, health and mental health treatment, etc.) collected on each subject. The investigators have been tracking the subjects, and are now beginning to reinterview the adolescents. Because of their extensive and thorough tracking procedures, the investigators will be able to reinterview subjects regardless of whether they are back in the community, incarcerated, or have left the immediate area. The large sample size will provide sufficient statistical power to study rarer disorders (especially comorbidity), patterns of drug use, and risky, life-threatening behaviors. OJJDP funding for this project began in FY 1998.

The project will be implemented by the current grantee, Northwestern University. No additional applications will be solicited in FY 2000.

Communities In Schools, Inc.—Federal Interagency Partnership

This program will continue an ongoing national school dropout prevention model developed and implemented by Communities In Schools, Inc. (CIS). CIS, Inc., provides training and technical assistance in adapting and implementing the CIS model in States and local communities. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where they exist, CIS State organizations assume primary responsibility for local program replication during the Federal Interagency Partnership. The Partnership is based on enhancing (1) CIS, Inc., training and technical assistance capabilities; (2) CIS capability to introduce selected initiatives for youth at the local level; (3) the information dissemination capability of CIS; and (4) the capability of CIS to network with Federal agencies on behalf of State and local CIS programs. With OJJDP's support, CIS, Inc. will place a special focus within the CIS Network on family strengthening initiatives that benefit both youth and their families.

The program will be implemented by the current grantee, Communities In Schools, Inc. No additional applications will be solicited in FY 2000.

A Demonstration Afterschool Program

The Demonstration Afterschool Program was funded in FY 1998 as a pilot afterschool program to reduce juvenile delinquency and increase school retention. This program, known as Estrella, offers the basic building blocks that are critical for preventing juvenile delinquency and provides youth with a chance to succeed academically and physically in an environment that is conducive to learning. Through a curriculum of hands-on science and reading projects and supervised recreation, Estrella is providing a constructive alternative to afternoons of unsupervised free time. Elementary students are the target population for this effort. New Mexico Mathematics, Engineering, Science Achievement (NM MESA) provides the academic component of the program, and middle and high school students act as mentors to the elementary students in a highly interactive learning environment. The Regents of the University of New Mexico's Institute for Social Research designed this program and is evaluating it, using both qualitative and quantitative methods. This project is at two sites, Loma Linda and Desert Trail Schools in the Gadsden Independent School District, in Don Ana County, New Mexico, and serves approximately 50 middle school students and 100 elementary school students from the six Gadsden High School feeder schools.

This project will be implemented by the current grantee, the Regents of the University of New Mexico. No additional applications will be solicited in FY 2000.

Diffusion of State Risk- and Protective-Factor-Focused Prevention

Since FY 1997, OJJDP has provided funds to the National Institute on Drug Abuse, through an interagency agreement, to support this 5-year study of the public health approach to prevention, focusing on risk and protective factors for substance abuse at the State and community levels. The study is identifying factors that influence the adoption of the public health approach and assessing the association between this approach and the levels of risk and protective factors and substance abuse among adolescents. The study will also examine State substance abuse data gathered from 1988 through 2001 and use interviews to describe the process of implementing the epidemiological risk- and protective-factor approach in Colorado, Kansas, Illinois, Maine, Oregon, Utah, and Washington.

This project will be implemented by the current grantee, the Social Development Research Group at the University of Washington School of Social Work. No additional applications will be solicited in FY 2000.

Evaluation of the Truancy Reduction Demonstration Program

In FY 1999, OJJDP awarded funds to eight sites around the country to implement truancy reduction projects. These sites included Athens, GA; Contra Costa, CA; Honolulu, HI ; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. Grantees represent a diversity of models and geographic locations. OJJDP also selected the Colorado Foundation for Families and Children (CFFC) to conduct the national evaluation of the Truancy Reduction Demonstration Program. As part of the evaluation, CFFC will (1) determine how community collaboration can impact truancy reduction and lead to systemic reform, and (2) assist OJJDP in the development of a community collaborative truancy reduction program model and identify the essential

elements of that model. To this end, CFFC is helping project sites to further identify and document the nature of the truancy problem in their communities, enhance the process of effective truancy reduction planning and collaboration, and incorporate that process into the implementation of the Truancy Reduction Demonstration Program at each site. In addition, CFFC is assisting sites in collecting information on truant youth and documenting services. The project is scheduled to last 3½ years.

This project will be implemented by the current grantee, Colorado Foundation for Families and Children. No additional applications will be solicited in FY 2000.

Intergenerational Transmission of Antisocial Behavior Project

The purpose of this project is to expand on the Rochester Youth Development Study by examining the development of antisocial behavior and delinquency in the children of the original Rochester, NY, subjects of OJJDP's Program of Research on the Causes and Correlates of Delinquency. By age 21, 40 percent of the original Rochester subjects were parents. This provides a unique opportunity to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. Results of the study should provide useful findings with policy implications for prevention programs. The program is being funded under an FY 1998 interagency agreement between OJJDP and the National Institute of Mental Health.

The project will be implemented by the current grantee, SUNY Research Foundation. No additional applications will be solicited in FY 2000.

Investing in Youth for a Safer Future—A Public Education Campaign

OJJDP will continue its support, which began in FY 1997, of the National Crime Prevention Council (NCPC) advertising campaign Investing in Youth for A Safer Future through the transfer of funds to the Bureau of Justice Assistance (BJA) under an intra-agency agreement. OJJDP and BJA are working with the NCPC Media Unit to produce, disseminate, and support effective public service advertising and related media to inform the public of effective solutions to juvenile crime and to motivate young people and adults to get involved and support these solutions. The featured solutions include effective prevention programs and intervention strategies.

The program will be administered by the Bureau of Justice Assistance through its existing grant to the National Crime Prevention Council. No additional applications will be solicited in FY 2000.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder

OJJDP will transfer funds under an interagency agreement with the National Institute of Mental Health (NIMH) to support this research, funded principally by NIMH. In 1992, NIMH began a study of the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of afflicted children continue to experience symptoms in adolescence and adulthood. The study will continue through 2000 and will follow the original families and a comparison group. OJJDP's participation, which began in FY 1998, will allow for investigation into the subjects' delinquent behavior and contact with the legal system, including arrests and court referrals.

OJJDP will support this study through an interagency agreement with the National Institute of Mental Health. No additional applications will be solicited in FY 2000.

National Center for Conflict Resolution Education

Funded under a competitively awarded cooperative agreement in FY 1995, the National Center for Conflict Resolution Education works to integrate conflict resolution education (CRE) programming into all levels of education in schools, juvenile facilities, and youth-serving organizations. In FY 1998, OJJDP entered into a partnership with the U.S. Department of Education to expand and enhance this project. The grantee provides training and technical assistance through onsite training and consultation for teams from schools, communities, and juvenile facilities; by providing resource materials including Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings and an enhanced, interactive CD–ROM that teaches conflict resolution skills through the presentation of real-life situations that confront young people; and by partnering with State-level agencies to establish State training institutes and otherwise build local capacity to implement successful CRE programs for youth. The Center also facilitates peer-to-peer mentoring.

The project will be implemented by the current grantee, the Illinois State Bar Association—Illinois LEARN. No additional applications will be solicited in FY 2000.

Partnerships for Preventing Violence

This program will continue for a second year in a multiple funding agreement among OJJDP, the U.S. Department of Education, and the U.S. Department of Health and Human Services to provide support for distance training using satellite videoconferencing as the medium. The project, funded under a 3-year grant, consists of a series of six live, interactive satellite training broadcasts that focus on violence prevention programs and strategies that have proven promising or effective. The training is targeted to school and community violence prevention personnel, health care providers, law enforcement officials, and other service providers representing a variety of community-based and youth-serving organizations. To date, three events have been held with a fourth planned by October 15, 1999.

The project will be implemented by the current grantee, Harvard University School of Public Health. No additional applications will be solicited in FY 2000.

Proactive Youth Program

In FY 1998, OJJDP funded the New Mexico Proactive Youth Program. The New Mexico Police Activities League (PAL) has implemented a statewide prevention project consisting of recreational, educational, and cultural activities for at-risk youth and their families. The goal of this effort is to reduce negative behavior and promote healthy behavioral patterns among New Mexico's youth by providing activities that unite youth with law enforcement officers, educators, and other positive adult role models. PAL programs and activities are open to all youth between the ages of 5 and 18 and their families. Special outreach efforts are made to target at-risk youth, including children from persistently low-income families, children with incarcerated family members, Native American youth living on reservations, and juveniles involved in gang activities. Local PAL programs have been initiated in the following New Mexico communities: Bloomfield, Cochiti, Gallup, Las Cruces, Lordsburg, Roswell, Santa Fe, and Tohatchi. During FY 2000, additional programs will be developed in Clovis, Grants, and Silver City and in Dona Ana County. This

program is being evaluated by the Regents of the University of New Mexico's Institute for Social Research. The research design includes a process and outcome evaluation that will document and assess the implementation, effectiveness, and impact of this program.

This project will be implemented by the current grantee, the Regents of the University of New Mexico. No additional applications will be solicited in FY 2000.

Professional Development in Effective Classroom and Conflict Management

This North Carolina pilot initiative was designed to improve classroom management and to assist in the creation of safe learning environments. Funds will be awarded in FY 2000 to the current grantee, the Center for the Study of School Violence, to complete the initial phase of its pilot in partnership with the University of North Carolina and the North Carolina State Board of Education. The purpose of the pilot program is to increase the ability of teachers and administrators to model and use sound conflict resolution practices by integrating skills training into preservice curriculums at North Carolina schools of education and by working with the North Carolina State Board of Education to change curriculum requirements to include conflict resolution skills training in the context of effective classroom management.

The project will be implemented by the current grantee, the Center for the Study of School Violence. No additional applications will be solicited in FY 2000.

Risk Reduction Via Promotion of Youth Development

This program, also known as Early Alliance, is a large-scale prevention study involving hundreds of African American and Caucasian children in several elementary schools in lower socioeconomic neighborhoods of Columbia, SC. This project is designed to promote coping-competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school. Children are being followed longitudinally throughout the 5 years of the project. The program is funded through an interagency agreement with the National Institute of Mental Health (NIMH), whose grantee is the University of South Carolina. Funding has also been provided by the Centers for Disease Control and Prevention and the National Institute on Drug Abuse.

This program will be implemented under the interagency agreement with the National Institute of Mental Health by the current grantee, the University of South Carolina. No additional applications will be solicited in FY 2000.

Strengthening Services for Chemically Involved Children, Youth, and Families

The U.S. Departments of Justice and Health and Human Services (HHS) provide services to children affected by parental substance use or abuse. OJJDP administers this training and technical assistance program, which began in FY 1998, with funds transferred to OJJDP by HHS's Substance Abuse and Mental Health Services Administration, through a cooperative agreement with the Child Welfare League of America (CWLA), a nonprofit organization. CWLA recognizes that children and youth in the child welfare and juvenile justice systems are among the most at risk for developing an alcohol or other drug problem (AOD). Typically these children have more risk factors than other children and fewer protective factors. This is especially true of youth in residential placement who have often witnessed or committed violent acts, have been physically or psychologically abused, have experienced failure and truancy in school, and have mental health and substance abuse problems.

Staff members in the residential child care system often have little or no substance abuse training. CWLA's 1997 AOD survey documented that less than 25 percent of State child welfare agencies provide training to group residential staffs on recognizing and dealing with AOD problems. What further complicates this matter is that partnerships between AOD programs and child welfare facilities rarely exist, creating a lack of coordinated services for children of substance abusers and/or for substance abusing youth in residential care.

As a 2-year project, CWLA will identify five residential child welfare sites, one in each of the CWLA's five regions, to demonstrate the effectiveness of integrating AOD prevention/treatment strategies into existing child welfare and juvenile justice programs and services, in order to educate staff and improve outcomes for adolescents participating in the programs. CWLA will also provide technical assistance to other member agencies replicating the various program models identified through their evaluations of the programs.

This jointly funded project will be implemented by CWLA. No additional applications will be solicited in FY 2000.

Training and Technical Assistance Program for the Arts Programs for Juvenile Offenders in Detention and Corrections Initiative

OJJDP is collaborating with the National Endowment for the Arts in providing the technical assistance program for the Arts Programs for Juvenile Offenders in Detention and Corrections Initiative. Grady Hillman has been awarded a grant to provide technical assistance in the area of art-based programming for juvenile offenders to support program development and implementation; provide ongoing technical assistance, and publish a document on the implementation of arts programming in juvenile corrections and detention. The technical assistance will be for the purpose of ensuring focused, professional technical support for program development and implementation, including program design, artist selection and training, and interaction between the arts organizations and the juvenile justice system. The technical assistance materials that will be developed through this national initiative will provide a blueprint for communities that seek to undertake similar programs. The nature of the Arts Programs for Juvenile Offenders in Detention and Corrections affords a unique opportunity to develop new programs and enhance existing programs while creating documentation instrumentations for the juvenile justice system. The sites provided technical assistance are Bronx, NY; Gainesville, TX; Riviera Beach, FL; Rochester, NY; Seattle, WA; and Whittier, California.

This program will be implemented by the current grantee, Grady Hillman. No additional applications will be solicited in FY 2000.

Truancy Reduction Demonstration Program

In FY 1998, OJJDP, the Executive Office for Weed and Seed within the Office of Justice Programs, and the U.S. Department of Education jointly engaged in a grant program to address truancy. This program specifically outlines four major comprehensive components: (1) System reform and accountability, (2) a service continuum to address the needs of children and adolescents who are truant, (3) data collection and evaluation, and (4) a community education and awareness program from kindergarten through grade 12 that addresses the need to prevent truancy and to intervene with youth who are truant. The goals of this

program are to develop and implement or expand and strengthen comprehensive truancy programs that pool education, justice system, law enforcement, social services and community resources; identify truant youth; cooperatively design and implement comprehensive, systemwide programs to meet the needs of truants; and design and maintain systems for tracking truant youth. OJJDP has awarded funds for this program to eight sites: three non-Weed-and-Seed sites received up to $100,000 each (Honolulu, HI; Jacksonville, FL; and King County, WA), and five Weed and Seed sites received up to $50,000 each (Athens, GA; Houston, TX; Martinez, CA; Tacoma, WA; and Yaphank, NY). All sites are currently involved in a 6-month planning phase.

It is anticipated that during the next 2 years, this program will focus on the development of implementation and evaluation plans that link youth and adolescents who are truant with community-based services and programs, as well as on a full implementation of the community's comprehensive systemwide plan to prevent and intervene with the problem of truancy. This program will be evaluated by the Colorado Foundation for Families and Children who will conduct a process evaluation that will identify factors contributing or impeding the successful implementation of a truancy program.

Truancy activities will be carried out by the current grantees. No additional applications will be solicited in FY 2000.

Strengthening the Juvenile Justice System

Balanced and Restorative Justice (BARJ) Training Project

The BARJ project's goal is to control juvenile delinquency through increased use of restitution, community service, and other innovative programs as part of a jurisdictionwide juvenile justice change from traditional retributive or rehabilitative system models to balanced and restorative justice orientation and procedures. The specific steps for achieving this goal involve preparation of materials and training of personnel interested in restorative justice and the ''balanced approach.'' The steps also include providing onsite technical assistance to selected State and local jurisdictions committed to implementing the balanced approach. Materials development in FY 2000 will include documents containing information on restorative justice programs, practices, and policy directions. The materials will be useful for training juvenile justice system practitioners and managers on the BARJ model and for onsite technical assistance. The training and technical assistance will be delivered at regional and national roundtables, juvenile justice conferences, and specialized workshops. ''Training of trainers'' programs will also be offered. There will be some concentration of BARJ technical assistance at the State level and on advancing judges' and prosecutors' leadership in the area of restorative justice. Further, there will be an effort to involve corporations and foundations in supporting BARJ and initial exploration of introducing BARJ in higher education.

This project will be implemented by the current grantee, Florida Atlantic University. No additional applications will be solicited in FY 2000.

Building Blocks for Youth

The goals of this initiative are to protect minority youth in the justice system and promote rational and effective juvenile justice policies. These goals are accomplished by the following components: (1) Conducting research on issues such as the impact on minority youth of new State laws and the implications of privatization of juvenile facilities by profit-making corporations; (2) undertaking an analysis of decisionmaking in the justice system and development of model decisionmaking criteria that reduce or eliminate disproportionate impact of the system on minority youth; (3) building a constituency for change at the national, State, and local levels; and (4) developing communication strategies for dissemination of information. A fifth component, direct advocacy for minority youth, is funded by sources other than OJJDP. Funding by OJJDP began in FY 1998. Youth Law Center has undertaken tasks to move this initiative forward and will require additional time and funding to complete the initial identified goals.

This continuation will be implemented by the current grantee, the Youth Law Center. No additional applications will be solicited in FY 2000.

Census of Juveniles in Residential Placement

In FY 1997, the Census of Juveniles in Residential Placement (CJRP) replaced the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities, known as the Children in Custody census. CJRP collects detailed information on the population of juveniles who are in juvenile residential placement facilities as a result of contact with the juvenile justice system. New methods developed for CJRP are expected to produce more accurate, timely, and useful data on the juvenile population, with less reporting burden for facility respondents. The CJRP was conducted for the second time in October 1999. Data collection efforts will continue into 2000. OJJDP anticipates delivery of the final data file by the end of FY 2000.

This program will be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 2000.

Center for Students With Disabilities in the Juvenile Justice System

During FY 1999, OJJDP undertook a joint initiative with the Office of Special Education and Rehabilitative Services, U.S. Department of Education to establish a Center for Students with Disabilities in the Juvenile Justice System. The Secretary of Education and the Attorney General expect this project to have a significant impact on the improvement of juvenile justice system services for students with disabilities. Improvements in the areas of prevention, educational services, and reintegration based on a combination of research, training, and technical assistance will lead to improved results for children and youth with disabilities. The Center for Students with Disabilities in the Juvenile Justice System will provide guidance and assistance to States, schools, justice programs, families, and communities to design, implement, and evaluate comprehensive educational programs, based on research-validated practices, for students with disabilities who are within the juvenile justice system.

This program will be implemented by the University of Maryland through an award by the U.S. Department of Education. No additional applications will be solicited in FY 2000.

Circles of Care Program

In FY 1998, the Center for Mental Health Services (CMHS) initiated a program entitled ''Circles of Care'' to build the capacity of selected Native American Tribes to develop a continuum of care for Native American youth at risk of mental health, substance abuse, and delinquency problems. As part of multiyear joint efforts with CMHS, OJJDP entered into a 3-year interagency agreement to provide funding support to the Circles of Care Program. OJJDP transferred funds in FY's 1998 and 1999 to CMHS to support the funding of one of nine sites. The

Circles of Care Program is designed to facilitate the planning and development of a continuum of care.

The currently funded projects will continue in FY 2000 through an interagency agreement with the Center for Mental Health Services. No additional applications will be solicited in FY 2000.

Community Assessment Center

The Community Assessment Center (CAC) program is a multicomponent demonstration initiative designed to test the efficacy of the CAC concept. CAC's provide a 24-hour centralized point of intake and assessment for juveniles who have or are likely to come into contact with the juvenile justice system. The main purpose of a CAC is to facilitate earlier and more efficient prevention and intervention service delivery at the ''front end'' of the juvenile justice system. In FY 1997, OJJDP funded two planning grants and two enhancement grants to existing assessment centers for a 1-year project period, a CAC evaluation, and a technical assistance component.

Based on a limited competition among the four sites, in FY 1998, OJJDP provided additional funding for 12 months to one of the initial planning sites (Lee County Sheriff's Office in Lee County, FL) and to one of the initial enhancement sites (Jefferson Center for Mental Health in Jefferson County, CO). The two other sites (Human Service Associates, Inc. (HSA) in Orlando, FL, and the Denver Juvenile Court in Denver, CO) received increased funding from Juvenile Accountability Incentive Block Grant funds to develop a fully operational CAC, including all four CAC conceptual elements. Increased funding was also provided to the national evaluator, the National Council on Crime and Delinquency.

During year 2, the Lee County Sheriff's Office worked to design and implement a comprehensive management information system that will serve as the backbone of the future assessment center. The Jefferson Center for Mental Health further enhanced its assessment center by conducting an intensive review of existing assessment tools and enhancing the case management process. In addition, both Denver and Orlando (HSA) began developing fully operational CAC's.

In FY 2000, OJJDP will provide additional funding to support the full implementation of OJJDP's CAC concept to the current grantees in Denver and Orlando. No additional applications will be solicited in FY 2000.

Comprehensive Children and Families Mental Health Training and Technical Assistance

Under an FY 1999 interagency agreement, OJJDP transferred funds to the Center for Mental Health Services (CMHS) to support the new contract for training and technical assistance for the CMHS-funded Comprehensive Mental Health sites. These funds will be used to enhance the involvement of the juvenile justice system in the systems of care that are being developed in each of the CMHS-funded sites. Funds will again be transferred to CMHS in FY 2000 to support the training and technical assistance and to meet the terms of the 3-year interagency agreement.

OJJDP will support this initiative through an interagency agreement with the Center for Mental Health Services. No additional applications will be solicited in FY 2000.

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

OJJDP has been providing support for development of its Comprehensive Strategy for several years. This project will complete ongoing strategic planning efforts in two States, Oregon and Wisconsin, and provide implementation support in six States that have completed the strategic planning process. OJJDP will also explore the addition of two or more Comprehensive Strategy States in FY 2000. As in the original eight States, up to six local jurisdictions will be identified to receive Comprehensive Strategy planning training and technical assistance. OJJDP will continue to provide technical assistance to further assist States and local jurisdictions, through training and technical assistance, in developing and implementing the Comprehensive Strategy. Further development and update of the Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders will be completed in FY 2000.

This project will be implemented by the current grantees, the National Council on Crime and Delinquency and Developmental Research and Programs, Inc. No additional applications will be solicited in FY 2000.

Evaluation of the Department of Labor's Education and Training for Youthful Offenders Initiative

This evaluation will document the activities undertaken by two States awarded grants under the U.S. Department of Labor's (DOL's) Education and Training for Youthful Offenders Initiative. Each DOL grantee will provide comprehensive school-to-work education and training within a juvenile correctional facility and followup and job placement services as youth return to the community. It is intended that the comprehensive services developed under these grants will serve as models for other juvenile correctional facilities across the country.

The OJJDP-sponsored evaluation of these projects will be conducted in two phases. During Phase I, a process evaluation will be conducted at each site to document the extent to which educational, job training, and aftercare services were enhanced with DOL funding. Also, the feasibility of conducting an impact evaluation at each site will be determined during Phase I. Phase II will entail conducting an impact evaluation at one or both sites. For those sites where a rigorous impact evaluation can be conducted, the effects of the program on job-related skills, employment, earnings, academic performance, and recidivism will be measured.

This project will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2000.

Evaluation of the Intensive Community-Based Aftercare Program

In FY 1995, OJJDP competitively awarded a grant to the National Council on Crime and Delinquency to perform a process evaluation and design an outcome evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance Program. In FY 1998, the project was supplemented and extended for an additional 2 years to continue the outcome evaluation, which seeks to determine the extent of the differences between the Intensive Community-Based Aftercare Program (IAP) participants and the ''regular'' parolees, the supervision and services provided to both groups, and the cost-effectiveness of IAP. Data collection is being accomplished using several methods including searching State police records to measure recidivism and analyzing State agency and juvenile court data to estimate costs.

This project will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2000.

Evaluation of Teen Courts

This project, which OJJDP began in FY 1997, is measuring the effect of

handling young, relatively nonserious law violators in teen courts rather than in traditional juvenile or family courts. Researchers are collecting data on several dimensions of program outcomes, including postprogram recidivism and changes in teens' perceptions of justice and their ability to make more mature judgments. Analyses of these dimensions will be used to compare youth handled in at least three separate teen court programs with those processed by the traditional juvenile justice system. In addition, the study will conduct a process evaluation of the teen court programs, exploring legal, administrative, and case processing factors that affect the ability of the programs to achieve their goals.

This evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 2000.

Helping Communities To Promote Youth Development

OJJDP will continue to provide support to the Institute of Medicine/National Research Council, National Academy of Sciences for a review and synthesis of existing evidence regarding the effectiveness of community-level interventions and service programs designed to promote positive youth development. The strengths and limitations of measurement and methodologies used to evaluate these interventions will be assessed, as well as policy and programmatic implications of this research. In addition to a final report that will synthesize the work of the committee, brief summary ''fact sheets'' will be widely disseminated to policymakers, local decisionmakers, program administrators, service providers, researchers, community organizers, and other key stakeholders.

OJJDP will implement this program through an interagency agreement with the National Academy of Sciences. No additional applications will be solicited in FY 2000.

Intensive Community-Based Aftercare Dissemination and Technical Assistance Program

This initiative supports implementation, training and technical assistance, and an independent evaluation of an intensive community-based aftercare model in three competitively selected demonstration sites. The overall goal of the intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model has three distinct, yet overlapping segments: (1) Prerelease and preparatory planning activities during incarceration, (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry, and (3) long-term reintegrative activities to ensure adequate service delivery and the required level of social control. The three sites will complete 5 years of program development and implementation in FY 2000. Followup data collection will continue into FY 2000 to capture information on youth who transitioned back into the community. In late FY 1999, Johns Hopkins University, the current grantee, will shift its focus from primarily providing training and technical assistance to grantees to developing a comprehensive dissemination, training, and technical assistance effort to State juvenile justice systems throughout the United States.

The IAP project will be implemented by the current grantee, the Johns Hopkins University. No additional applications will be solicited in FY 1999.

Juvenile Defender Training, Technical Assistance, and Resource Center

In FY 1999, OJJDP competitively funded the American Bar Association (ABA) to develop and implement the Juvenile Defender Training, Technical Assistance, and Resource Center (Juvenile Defender Center) to support training and technical assistance and to serve as a clearinghouse and resource center for juvenile defenders in this country. Recognizing that a lack of training, technical assistance, and resources for juvenile defenders weakens the juvenile justice system and results in a lack of due process for juvenile offenders, OJJDP provided seed money in FY 1999 to fund the initial planning and implementation of a Juvenile Defender Center. The grantee is expected to develop a partnership with other agencies and organizations that will provide or help develop financial resources to assist in sustaining a permanent Center. The Center will be designed to provide both general and specialized training and technical assistance to juvenile defenders in the United States. The design will also incorporate a resource center for purposes such as serving as a repository for the most recent litigation on key issues, a collection of sample briefs, and information on expert witnesses.

This project will be carried out by the current grantee, the American Bar Association. No additional applications will be solicited in FY 2000.

Juvenile Justice Prosecution Unit

This American Prosecutors Research Institute project's goal is to increase and improve prosecutor involvement in juvenile justice. The Project will pursue continuing needs assessment by a working group of experienced prosecutors regarding district attorney requirements in the juvenile area. The project will design and present specialized training events for elected and appointed district attorneys and for juvenile unit chiefs. The training will deal with prosecutor leadership roles in the juvenile justice system and with the clarification or resolution of important juvenile justice issues. Such issues are expected to include juvenile policy, code revisions, resource allocation, charging, transfer to criminal courts, alternative juvenile programs, confinement, record confidentiality, and collaboration with other agencies. Training will also address certain evolving juvenile justice areas, such as community prosecution, community justice, restorative justice, community assessment centers, and mental health concerns, among others. In addition, the project will continue to develop training and reference materials pertaining to significant juvenile justice topics.

This project will be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications will be solicited in FY 2000.

Juvenile Residential Facility Census

As part of a long-term relationship with the Bureau of the Census, OJJDP will continue to fund the development and testing of a new census of juvenile residential facilities. This census will focus on those facilities that are authorized to hold juveniles based on contact with the juvenile justice system. From interviews with facility administrators and staff at 20 locations, project staff have produced a detailed report discussing how best to capture information on education, mental health and substance abuse treatment, health services, conditions of custody, staffing, and facility capacity. Project staff have also drafted and tested a questionnaire based on the interview results. The census was tested in October 1998. Census Bureau staff will prepare a report on the results of this test and make specific recommendations concerning changes and census implementation. In 2000, OJJDP and Census will work together to finalize the census format and data collection methods. The census will be administered for the first time in October 2000.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No additional applications will be solicited in FY 2000.

Linking Balanced and Restorative Justice and Adolescents (LIBRA)

This project addresses effective interventions with the at-risk and delinquent youthful population of Vermont, combined with Vermont's determination to raise, support, teach, and nurture youth in their communities. As a rural state, Vermont faces many of the same issues plaguing larger, urban States, including underage drinking, drug abuse, education failure, and mental health issues. The goal of this program is to continue development of a comprehensive, integrated, balanced, and restorative system of justice for youthful offenders that holds them accountable for their actions to victims, protects the community, builds offender skills and competencies, and offers opportunities for positive connections to community members. OJJDP funding for the program began in FY 1998. Based on the Balanced and Restorative Justice (BARJ) philosophy of reparation, rather than retribution, the LIBRA project has created a network of Juvenile Reparative Boards, which hold youth immediately accountable for their actions and provide direct services to youth, parents, victims, and community members. The project will also continue to pilot Community Justice Centers, which demonstrate that the community is the core of the justice process and recognize youth as a vital part of the community. Also, a curriculum of Competency Training Classes for youthful offenders and youth at risk of delinquency will be maintained and will focus on conflict resolution, social skills, problem solving, and decisionmaking.

This program will be implemented by the current grantee, the Vermont Department of Social and Rehabilitation Services. No additional applications will be solicited in FY 2000.

Longitudinal Study To Examine the Development of Conduct Disorder in Girls

The purpose of this project is to examine the development of conduct disorder in a sample of 2,500 inner-city girls who are ages 6 to 8 at the beginning of the study. The study will follow the girls annually for 5 years and will provide information that is critical to the understanding of the etiology, comorbidity, and prognosis of conduct disorder in girls. This project is important because delinquency in girls has been steadily increasing over the past decade and a better understanding of the developmental processes in girls will help in identifying effective means of prevention and provide direction for juvenile justice responses to delinquent girls. The program is being funded under an FY 1999 interagency agreement between OJJDP and the National Institute of Mental Health.

The project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2000.

National Juvenile Justice Data Analysis Project

In 1998, OJJDP established the National Juvenile Justice Data Analysis Project (NJJDAP) to serve the critical information needs of the juvenile justice community and OJJDP. The NJJDAP produces analyses and disseminates statistical information to the public and to State and local policymakers. The project serves as a principal resource to accentuate and enhance OJJDP's ability to provide quality information to the field of juvenile justice. The project uses many national data sources to examine issues critical to the juvenile justice system. The data sources used are not limited to criminal justice or juvenile justice data. In 1999, the NJJDAP has produced analyses based on the National Longitudinal Survey of Youth (NLSY), operated by the Bureau of Labor Statistics. The NLSY is a national self-report survey of youth that includes several measures of juvenile offending. Also, the NJJDAP has produced analyses of the Census of Juveniles in Residential Placement.

The project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 2000.

National Juvenile Justice Program Directory

To conduct its statistical functions, OJJDP must maintain a current and accurate list of all entities surveyed either in the various censuses or in surveys. This list currently consists of a complete list of juvenile residential facilities and a list of juvenile probation offices. As OJJDP expands its statistical work, it will need to expand this listing as well. The list needs to contain contact information for the various facilities or agencies and appropriate information for sampling. During 2000, the Census Bureau will continue to maintain the currently available portions of the directory and will explore expansions needed to monitor other areas of juvenile justice such as nonresidential correctional programs and juvenile court staff.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications will be solicited in FY 2000.

The National Longitudinal Survey of Youth 97

OJJDP will continue to support the third round of data collection, begun in FY 1997, by the National Longitudinal Survey of Youth 97 (NLSY97) through an interagency agreement with the Bureau of Labor Statistics (BLS). The NLSY97 is studying school-to-work transition in a nationally representative sample of 8,700 youth ages 12 to 16 years old. BLS is also collecting data on the involvement of these youth in antisocial and other behavior that may affect their transition to productive work careers. The survey provides information about risk and protective factors related to the initiation, persistence, and desistance of delinquent and criminal behavior and provides an opportunity to determine the generalizability of findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency and other longitudinal studies to a nationally representative population of youth.

The program will be implemented by the BLS under an interagency agreement. No additional applications will be solicited in FY 2000.

Performance-Based Standards for Juvenile Correction and Detention Facilities

Performance-Based Standards for Juvenile Correction and Detention Facilities Program, which began with a competitive OJJDP cooperative agreement awarded to the Council of Juvenile Correctional Administrators (CJCA) in FY 1995, has developed a performance management system for the management of juvenile correctional facilities. The system provides tools for monitoring and improving outcomes in six critical facility functions: providing security, safety, order, health care, educational, and mental health programming within a context that protects individual rights. Currently, 32 facilities, including 2 State systems, have begun the implementation process, which consists of the data collection and analysis of baseline data; the development of an initial facility improvement plan, which may include financial support to make improvements; and reassessment and revision of the facility improvement

plan. During FY 2000, the program itself is undergoing refinements to improve management of the process for the facilities. In addition, approximately 15 new sites will begin the process, using streamlined data collection and new diagnostic tools. In addition to working with the participating facilities during this funding period, the project will finalize the implementation model; revise instruments, as needed; and develop criteria for determining full implementation, including the testing of community release measures. Where appropriate, the project will establish performance benchmarks and develop analytical reports regarding facility and system change that has occurred in the test sites.

This program will be implemented by the current grantee, the Council of Juvenile Correctional Administrators. No additional applications will be solicited in FY 2000.

San Francisco Juvenile Justice Local Action Plan—Delancy Street Initiative

In FY 1998, OJJDP provided funding to the City and County of San Francisco, CA, to support the implementation of a comprehensive effort to reform the city's juvenile justice system. San Francisco's Comprehensive Juvenile Justice Local Action Plan, facilitated by the Delancy Street Foundation CIRCLE (Coalition to Revitalize Communities, Lives and Environments), represents the culmination of a unique, collaborative needs assessment of the existing juvenile justice system. Based on this assessment, San Francisco identified six of the most critical gaps in the juvenile justice system and proposed programs to fill those gaps: Community Assessment and Referral Center, Early Risk and Resiliency, Safe Haven, Safe Corridor, the Life Learning Academy, and the Life Learning Residential Center for Girls. These six programs originated from the needs assessment and are a product of teams composed of representatives from San Francisco and its diverse communities.

In FY 1999, OJJDP provided funding to enhance services offered at the Life Learning Residential Center (Academy), an intensive life-changing, day treatment program designed to turn around the lives of youth with multiple problems that include multigenerational poverty, gang involvement, drug abuse, disciplinary problems, and school dropouts and failure. The Academy aims to strengthen a youth's bond with his family and extended family and the community, while providing complete ''life learning'' instruction and education. Funding will also be used for program replication throughout the country.

This project will be implemented by the current grantee, the City and County of San Francisco, in FY 2000. No additional applications will be solicited in FY 2000.

Survey of Juvenile Probation

OJJDP will continue to support the development of a survey of juvenile probation offices. This survey will lead directly to national estimates of the numbers of juveniles on probation at a given time. OJJDP began this effort in 1996 with assessments of current knowledge of probation and the need for information on this aspect of juvenile justice. The development efforts have so far included site visits to three State probation departments and local probation departments in those States. An additional seven States will be visited in the coming year. Based on this information, the Center for Survey Methods Research (CSMR) at the Bureau of the Census will develop a survey methodology and a survey questionnaire. The plans for this survey have expanded by necessity to include efforts (already under way under a separate agreement with the Bureau of the Census) to list and categorize juvenile probation offices nationally. Working with OJJDP, the Census Bureau will develop a list of probation offices and several categorizations of these offices to facilitate the development of a sampling scheme. In the coming year, OJJDP and the Census Bureau will continue working on the specifications for this list and continue efforts to develop the list. Also, working with the Governments Division of the Bureau of the Census, OJJDP will continue to take the steps needed to implement the survey. OJJDP anticipates the first Survey of Juvenile Probation will take place in calendar year 2002.

This project will be conducted through an interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 2000.

Technical Assistance to Native American Tribes and Alaskan Native Communities

The Technical Assistance to Native American Tribes and Alaskan Native Communities Program is designed to equip tribal governments with the necessary information and tools to enhance or develop comprehensive, systemwide approaches to reduce juvenile delinquency, violence, and victimization and increase the safety of their communities. In FY 1997, OJJDP awarded a 3-year cooperative agreement to the American Indian Development Associates (AIDA) to provide training and technical assistance to Indian nations seeking to improve juvenile justice services to children, youth, and families.

Throughout FY's 1998 and 1999, AIDA continued to provide technical assistance to Indian nations and developed information materials for Indian juvenile justice practitioners, administrators, and policymakers. Topic areas covered Indian youth gangs; personnel competency building, such as conducting effective preadjudication investigations and preparing reports; developing protocols to implement State Children's Code provisions that affect Native American children; establishing sustainable, comprehensive community-based planning processes that focus on the needs of tribal youth; and developing and implementing culturally relevant policies, programs, and practices. The technical assistance and materials also addressed the overlapping roles and jurisdiction of Federal, State, and tribal justice systems, particularly in understanding the laws and public policies applicable to or effective in Indian communities.

In FY 2000, OJJDP will continue to promote and provide technical assistance to tribes seeking to develop and enhance their juvenile justice systems. AIDA will provide training and technical assistance in the following emphasis areas: Developing a community-based secondary prevention program; developing a tribal justice probation system; developing multidisciplinary approaches to youth gang violence prevention; establishing risk assessment and classification systems; developing comprehensive strategies to handle offenders; expanding referral and service delivery systems; developing cooperative interagency and intergovernmental relationships; and developing technology to improve systems and increased access to juvenile justice information.

This program will be implemented by the current grantee, the American Indian Development Associates. No additional applications will be solicited in FY 2000.

TeenSupreme Career Preparation Initiative

In FY 1998, OJJDP, in partnership with the U.S. Department of Labor's (DOL's) Employment and Training Administration, provided funding support to the Boys & Girls Clubs of America to demonstrate and evaluate the TeenSupreme Career Preparation Initiative. This initiative provides

employment training and other related services to at-risk youth through local Boys & Girls Clubs with TeenSupreme Centers. In FY 1998, DOL funds supported program staffing in the existing 41 TeenSupreme Centers, and in 1999, the number of sites was expanded to 45. These 45 clubs are provided funding support to hire an employment specialist to work with the youth. Boys & Girls Clubs of America provides intensive training and technical assistance to each site and administrative and staffing support to the program from the national office. OJJDP funds support the evaluation component of the program, which is being implemented by an independent evaluator.

This jointly funded Department of Labor and OJJDP initiative will be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications will be solicited in FY 1999.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Through systemic change within local juvenile detention systems or statewide juvenile corrections systems, this project seeks to reduce overcrowding in facilities where juveniles are held. Competitively awarded in FY 1994 to the National Juvenile Detention Association (NJDA), in partnership with the San Francisco Youth Law Center, the project provides training and technical assistance materials for use by State and local jurisdictional teams. NJDA selected three jurisdictions (Camden, NJ; Oklahoma City, OK; and the Rhode Island Juvenile Corrections System) for onsite development, implementation, and testing of procedures to reduce crowding. All three original sites have completed their work. The grantee is exploring additional sites for comprehensive training and technical assistance in FY 2000. NJDA will also be initiating its Jurisdictional Team Training Course in FY 2000 at three sites that are experiencing overcrowding in their juvenile facilities.

This project will be implemented by the current grantee, the National Juvenile Detention Association. No additional applications will be solicited in FY 2000.

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for a national evaluation to document and explicate the process of community mobilization, planning, and collaboration that has taken place before and during the Safe Kids/Safe Streets awards; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets program. The initial 18-month grant began a process evaluation and an assessment of the feasibility of an impact evaluation. Westat will continue the process evaluation, which will now focus on tracking the implementation efforts at each of the sites; continue developing the national impact evaluation; and continue working with local evaluators to develop their capacity to evaluate programs. Also, Westat will add a fifth site to the evaluation.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 2000.

Nurse Home Visitation

In FY 2000, OJJDP will continue the integration of Prenatal and Early Childhood Nurse Home Visitation into five Operation Weed and Seed sites (Clearwater, FL; Fresno, CA; Los Angeles, CA; Oakland, CA; and Oklahoma City, OK) and one combined Weed and Seed/Safe Futures site (St. Louis, MO). Operation Weed and Seed is a national initiative to make communities safe through law enforcement activities and to rebuild crime-ridden communities across the country through social services and economic redevelopment. SafeFutures is an OJJDP initiative to assist in implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through the creation of a continuum of care in communities. The integration of the Prenatal and Early Childhood Nurse Home Visitation Program is co-funded by OJJDP, OJP's Executive Office for Weed and Seed, and the U.S. Department of Health and Human Services.

Several rigorous studies of the Prenatal and Early Childhood Nurse Home Visitation Program model indicate that it reduces the risks for early antisocial behavior and prevents problems associated with youth crime and delinquency, such as child abuse, maternal substance abuse, and maternal criminal involvement. A 15-year followup of the original Nurse Home Visitation program found that adolescents whose mothers received home visitation services over a decade earlier were less likely to have run away, been arrested, and been convicted of a crime than those whose mothers had not received a nurse home visitor. They also had lower levels of cigarette and alcohol use.

The current program being implemented in the six sites targets low income, first-time mothers and their infants to accomplish three goals: (1) Improve pregnancy outcomes by helping women alter their health-related behaviors, including use of cigarettes, alcohol and drugs; improve their nutrition; and reduce risk factors for premature delivery; (2) improve child health and development by helping parents provide more responsible and competent care for their children; and (3) improve families' economic self-sufficiency by helping parents develop a vision for their own future, plan future pregnancies, continue their education, and find work.

The project will be implemented by the current grantee, the University of Colorado Health Services Center. No additional applications will be solicited in FY 2000.

Research on Child Neglect

In FY 2000, OJJDP will continue to join several other Federal agencies, including the Office of Justice Program's National Institute of Justice, the U.S. Department of Education, and the Department of Health and Human Services' National Institutes of Health and Administration on Children, Youth, and Families (the Neglect Consortium), in funding research projects that will enhance understanding of the etiology, extent, services, treatment, management, and prevention of child neglect. This multiagency effort addresses the lack of research focusing specifically on the issue of child neglect. Child neglect may relate to profound health consequences, place children at higher risk for a variety of diseases and conditions, and interfere with normal social, cognitive, and affective development. Thus, child neglect is a serious public health, justice, social services, and education problem, not only compromising the immediate health of the Nation's children, but also threatening their growth and intellectual development, their long-term physical and mental health outcomes, their propensity for prosocial behavior, their future

parenting practices, and their economic productivity.

The research studies funded by this initiative can focus on a range of issues, including, but not limited to, the following: the antecedents of neglect; the consequences of neglect; the processes and mediators accounting for or influencing the effects of neglect; and treatment, preventive intervention, and service delivery.

This program will be implemented through an interagency agreement with the National Institutes of Health. No additional applications will be solicited in FY 2000.

Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

This 5½ year demonstration program is designed to foster coordinated community responses to child abuse and neglect. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated program response to break the cycle of early childhood victimization and later criminality and to reduce child abuse and neglect and resulting child fatalities. OJJDP awarded competitive cooperative agreements in FY 1997 to five sites (Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH). Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Office.

In FY 2000, continuation awards will be made to each of the current demonstration sites. No additional applications will be solicited in FY 2000.

The programs described above will further OJJDP's goals and help to consolidate and continue the gains made in the past few years in combating juvenile delinquency and victimization. OJJDP welcomes comments on this Proposed Program Plan.

Dated: December 13, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part III

Department of the Treasury

Fiscal Service

31 CFR Part 285

Offset of Tax Refund Payments to Collect State Income Tax Obligations; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA78

Offset of Tax Refund Payments To Collect State Income Tax Obligations

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim Rule with Request for Comments.

SUMMARY: Under provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 the Federal tax refund of a taxpayer who owes past-due, legally enforceable State income tax obligations may be reduced, or offset, by the amounts owed by the taxpayer. The funds offset from the taxpayers' Federal tax refunds are forwarded to the State that reported the State income tax obligation. Effective January 1, 2000, the Department of the Treasury will incorporate the procedures necessary to collect State income tax obligations reported by States as part of the centralized offset program operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Under this interim rule, past-due, legally enforceable State income tax obligations include any local income tax that is administered by the chief tax administration agency of the State.

DATES: Effective January 1, 2000. Comments will be accepted until January 19, 2000.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Dean Balamaci, Division Director, Debt Management Services, at (202) 874–6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

General

The Internal Revenue Code authorizes the Secretary of the Treasury to offset Federal tax refund payments to satisfy debts owed to the United States and to collect past-due support for States. Under the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685, 779 (1998), the authority to offset tax refund payments was amended to allow for the offset of Federal tax refund payments to collect past-due, legally enforceable State income tax obligations reported to the Secretary of the Treasury by States. The amendments authorizing such offsets are effective beginning January 1, 2000.

Prior to January 1999, offsets of tax refund payments were conducted by the Internal Revenue Service (IRS) under the tax refund offset program. Effective January 1, 1999, the IRS tax refund offset program was merged into the Treasury Offset Program, operated by the Financial Management Service (FMS). FMS, a bureau of the U.S. Department of the Treasury, disburses more than 850 million Federal payments annually, including tax refund payments to taxpayers on behalf of the IRS. The Treasury Offset Program is a centralized offset program in which FMS offsets tax refund payments as well as other nontax Federal payments to collect delinquent debts owed to Federal agencies and States.

This rule governs only the offset of one type of payment, i.e., tax refunds, to pay one type of delinquent debt, i.e., past-due, legally enforceable State income tax obligations. FMS has promulgated separate rules and procedures governing other types of offset, such as tax refund offset for the collection of debts owed to the Federal Government and tax refund offset for the collection of past-due support. FMS anticipates that Part 285 of this title ultimately will contain all of the provisions relating to centralized offset for the collection of debts owed to the Federal Government and to State governments, including past-due, legally enforceable State income tax obligations.

The Treasury Offset Program

The Treasury Offset Program currently works as follows. FMS maintains a delinquent debtor database. The database contains delinquent debtor information submitted and updated by Federal agencies owed debts by persons, and by States collecting debts including any past-due support being enforced by States. This database will be expanded to include past-due, legally enforceable State income tax obligations reported by States. As is done by Federal agencies, before submitting a debt to the database, States will certify to FMS that the debt is legally enforceable and that all due process prerequisites have been met. Before a Federal payment is disbursed to a payee, including Federal tax refund payments, FMS compares the payee information with debtor information in the delinquent debtor database operated by FMS. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or part, to satisfy the debt, to the extent allowed by law. FMS transmits amounts collected to the appropriate agencies or States owed the delinquent debt after deducting a fee charged to cover the cost of the offset program. Information about a delinquent debt or past-due, legally enforceable State income tax obligation will remain in the debtor database for offset as long as the debt remains past-due and legally collectible by offset, or until debt collection activity for the debt is terminated because of full payment, compromise, write-off or other reasons justifying termination or removal of the debt from the database.

Offset of Tax Refund Payments To Collect State Income Tax Obligations Under the Treasury Offset Program

This rule establishes procedures governing the collection of past-due, legally enforceable State income tax obligations by offsetting Federal tax refund payments. Procedures for processing claims by non-debtor spouses and for rejecting a taxpayer's election to apply his or her refund to future tax liabilities remain governed by IRS rules. Although tax refund payments issued beginning January 1, 2000, will be offset to collect past-due, legally enforceable State income tax obligations as part of the Treasury Offset Program, such offsets will be made in accordance with the requirements of 26 U.S.C. 6402(e).

After a tax refund offset occurs, FMS will notify the debtor that the offset has occurred. FMS also will provide information to the debtor regarding the amount and date of the offset, the State to which the amount offset was paid, and a contact in the State that would handle concerns or questions regarding the delinquent debt that resulted in the tax refund offset. The notice also will advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps that the non-debtor spouse may take to secure his or her proper share of the tax refund. IRS will continue to be responsible for reviewing tax refund claims by non-debtor spouses. FMS will provide States with sufficient information to identify the State income tax obligation for which amounts have been collected from tax refunds. FMS also will report tax refund offset information to the IRS at least weekly and to States on a periodic basis.

Sectional Analysis

Definitions

Several terms included in this interim rule have specific meanings that are discussed below. Other definitions included in the interim rule do not require explanation.

The term ''past-due, legally enforceable State income tax obligation'' means a debt which resulted from a final court judgment or a final administrative proceeding which has determined that an amount of State income tax is due. A final court judgment or a final administrative proceeding is one which is no longer subject to judicial review. The term ''past-due, legally enforceable State income tax obligation'' also means a debt which resulted from a final State income tax assessment which has not been collected provided the debt has not been delinquent for more than 10 years. A final State income tax assessment means an assessment for which the time for redetermination under State law or procedure has expired. The term ''assessment'' is intended to be interpreted broadly to include self-assessments. The date of delinquency of a debt which resulted from a final state income tax assessment for purposes of determining whether or not the debt has been delinquent for more than 10 years is to be determined in accordance with State law. For purposes of this interim rule, the term ''past-due, legally enforceable State income tax obligation'' is used interchangeably with the term ''debt.''

The term ''State'' means the States of the United States. The term also would include the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

The term ''State income tax'' is intended to cover all taxes determined under State law to be State income tax. The term includes any local income tax that is administered by the chief tax administering agency of the State.

The term ''tax refund offset'' means withholding or reducing a Federal tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment. This rule only governs the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of Federal payments other than tax refund payments for the collection of past-due legally enforceable State income tax obligations.

The term ''tax refund payment'' means the amount to be refunded to the taxpayer after the IRS has applied the taxpayer's overpayment to the taxpayer's past-due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 6402–3(a)(6)(i).

(b) General Rule

Upon notification to FMS of a debt by a State, in accordance with 26 U.S.C. 6402(e) and this interim rule, FMS will collect such debt by means of tax refund offset. The offset will be conducted by comparing tax refund payment records, certified to FMS by the IRS, with records of debts certified and submitted to FMS by States. Under FMS's centralized offset program, a match will occur when the taxpayer identifying number, as defined at 26 U.S.C. 6109, and name on a payment certification record are the same as the taxpayer identifying number and name on a debtor record. Under this interim rule, when a match occurs, and all other requirements for tax refund offset have been met, FMS would reduce the amount of the tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligations owed by the debtor. Any amounts not offset would be paid to the payee(s) listed in the payment certification record. As required by law, under this interim rule an offset will not occur if the address listed on the Federal tax return is not an address within the State seeking the offset.

(c) Notification of Past-due, Legally Enforceable State Income Tax Obligations

Paragraph (c) of the interim rule describes the process by which debt information would be submitted to FMS by States for tax refund offset. Paragraph (c)(1) describes the manner in which States would be required to submit past-due, legally enforceable State income tax debts, including certification requirements. In accordance with the requirements of 26 U.S.C. 6402(e), under the interim rule, FMS would be able to reject any notification that fails to meet these requirements.

Paragraph (c)(2) of the interim rule would establish a minimum debt requirement of $25.00 or such other amounts as determined by FMS. Where an individual owes more than one debt to the same State, the minimum amount will be applied to the aggregate amount of the debts owed. FMS will inform States on an annual basis of any changes in the minimum debt amount. FMS would have the option to reject any debt included in a notification which is below this amount.

Paragraph (c)(3) of the interim rule describes the certification requirements that would be required to be provided for each State income tax debt owed when a State submits notification to FMS. FMS would provide States with more specific instructions regarding the formatting of information and the required data elements.

Under paragraphs (c)(1) and (c)(3), States are required to certify compliance with pre-offset procedures contained in this rule and imposed by State law or procedures. The certifying official is required to have both the knowledge and authority to certify, on behalf of the State, that the requirements have been met. The certification and pre-offset procedures include a requirement that States provide debtors with notice that they intend to collect the debt by referral to Treasury for tax refund offset; that States afford debtors the opportunity to present evidence that all or part of the debt is not due; and that States establish procedures for reviewing evidence presented by debtors. While we are satisfied that these procedures adequately protect taxpayers from erroneous offsets, we are nevertheless of the view that special protections are warranted where a State is attempting to collect a debt by tax refund offset from an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, and therefore is immune from state taxation. Thus, procedures established for reviewing evidence presented by debtors in response to the notice that their debt is being submitted to Treasury for collection by tax refund offset, must include specific procedures to handle claims of individuals who claim immunity from state taxation on the basis of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation. These procedures are intended to ensure that such claims are considered on their merits before being submitted for collection by tax refund offset even in those cases where the individual claiming immunity has previously failed to timely present his or her claim in response to notice regarding the imposition of the tax or in response to the use of other collection tools. Additionally, as an added safeguard, the rule requires that States provide copies of these procedures to the Secretary of the Treasury, upon request, for review. This is to ensure that the conditions for participation in the program prescribed under this rule are being met.

Paragraph (c)(4) of the interim rule describes the procedures for correcting

and updating information transmitted to FMS by a State. As operated under the Treasury Offset Program, debts may be submitted for offset on an ongoing basis. Therefore, States will be able to increase the amount of the state income tax debt owed by an obligor after the debt is submitted for offset, subject to compliance with pre-offset State law and certification requirements where applicable. For example, while States would likely need to provide additional pre-offset notices to a debtor whose debt was being increased due to a new assessment, no additional notice would be required where a debt was being increased due to accrued interest and penalties of which the debtor had previously been notified. Decreases in the amount owed also must be reported in the manner and time frames provided by FMS.

(d) Priorities for Offset

Paragraph (d) of the interim rule describes how a tax refund payment will be applied when a taxpayer owes multiple debts certified for offset. The priorities are mandated by statute, 26 U.S.C. 6402(e). Before authorizing FMS to disburse a tax refund payment, the IRS will apply any amount of overpayment by the taxpayer to Federal tax liabilities of the taxpayer. See definition of ''tax refund payment'' in paragraph (a) of this section.

Paragraph (d)(1) states that, unless otherwise provided by Federal law, the tax refund payment will be reduced and applied to a taxpayer's debts in the following order of priority: first by the amount of any past-due support assigned to a State; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency; third, by the amount of any qualifying past-due support not assigned to a State; and fourth, by the amount of any past-due legally enforceable State income tax obligation.

Paragraph (d)(2) reiterates that the tax refund payment will be applied to the outstanding debts of a taxpayer prior to the taxpayer's future estimated tax liabilities. Any amounts remaining after offset will be refunded to the taxpayer.

Paragraph (d)(3) provides that, where FMS receives notice from a State that more than one debt subject to this section is owed by the debtor, any overpayment will be applied to the oldest debt first.

(e) Post-Offset Notice

Under paragraph (e) of this interim rule, once an offset of a tax refund payment has occurred, FMS will provide notice both to the payee and to the State that referred the debt to FMS. FMS will also notify the IRS of any offsets.

(f) Offset Made With Regard to a Tax Refund Payment Based Upon Joint Return

Paragraph (f) of the interim rule would provide that a non-debtor spouse who files a joint income tax return with a debtor may take appropriate action to secure his or her proper share of a tax refund from which an offset was made. Such procedures are governed by IRS rules and are not affected by this rule.

(g) Disposition of Amounts Collected

Paragraph (g) of the interim rule, describes how amounts collected from tax refund payments would be transmitted to the appropriate State. This paragraph also discusses the procedures applicable when an erroneous payment is made to a State.

(h) Fees

Paragraph (h) of the interim rule describes how FMS would determine the amount of the fee it would charge a State. It states that the fee would be set at an amount necessary for FMS to cover the full cost of the offset procedure, including any costs charged to FMS by the IRS. Under this interim rule, FMS would deduct the fee from the amount offset before that amount is transmitted to the State. Under this interim rule, the amount of the fee would be established annually, and States would be notified in advance of any changes in the amount of the fee.

(i) Review of Tax Refund Offsets

As provided in 26 U.S.C. 6402(f), the reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) is not subject to review by any court of the United States or by the Secretary of the Treasury, FMS, or IRS in an administrative proceeding. This provision does not impact any rights a debtor may otherwise have to dispute the existence or amount of the debt.

(j) Access to and Use of Confidential Tax Information

Access to and use of confidential tax information in connection with the tax refund offset program is governed by 26 U.S.C. 6103. Paragraph (j) of the interim rule describes permitted uses of confidential tax information in connection with tax refund offset.

(k) Effective Date

In accordance with section 3711(d) of Pub. L. 105–206, the inclusion of past-due, legally enforceable State income tax debts as part of the Treasury Offset Program will be effective for all tax refund payments payable beginning January 1, 2000.

Regulatory Analyses

This interim rule is not a significant regulatory action as defined in Executive Order 12866.

Executive Order 12866 and the President's Memorandum of June 1, 1998 require each agency to write all rules in plain language. We invite your comments on how to make this interim rule easier to understand.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the APA) because a comment period would be unnecessary, impracticable and contrary to the public interest. The Internal Revenue Code provisions authorizing the offset of Federal tax refunds to collect State income tax apply to refunds payable after December 31, 1999. A comment period is unnecessary because this interim rule does not change the ongoing offset process under the Tax Refund Offset Program, but rather provides guidance for States and disbursing officials to facilitate the addition of State income tax debts into the Tax Refund Offset Program. This interim rule merely establishes procedural requirements governing the transfer of information to and from States and reiterates and clarifies requirements established by statute. Since this interim rule provides critical guidance needed to facilitate the offset of tax refund payments to collect delinquent income tax debts owed to States, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued. The public is specifically invited to comment upon whether this rule should impose any requirements on States regarding notification to taxpayers and review of delinquent debts in addition to those required by statute and reiterated and clarified in this rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Privacy, Taxes.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.8 is added to subpart A to read as follows:

§ 285.8 Offset of tax refund payments to collect state income tax obligations.

(a) *Definitions.* For purposes of this section:

Debt as used in this section means past-due, legally enforceable State income tax obligation unless otherwise indicated.

Debtor as used in this section means a person who owes a state income tax obligation.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due, legally enforceable State income tax obligation means a debt which resulted from:

(1) A judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due,

(2) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review, or

(3) A State income tax assessment (including self-assessments) which has become final in accordance with State law but not collected and which has not been delinquent for more than 10 years.

State means the several States of the United States. The term ''State'' also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State income tax obligation means State income tax obligations as determined under State law. For purposes of this section, State income tax obligation includes any local income tax administered by the chief tax administration agency of the State.

Tax refund offset means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402–3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.

(b) *General rule.* (1) FMS will collect past-due, legally enforceable State income tax obligations by tax refund offset upon notification to FMS of a past-due, legally enforceable State income tax obligation in accordance with 26 U.S.C. 6402(e) and this section.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name on a payment certification record are the same as the taxpayer identifying number and name on a delinquent debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligation owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) FMS only will offset a tax refund payment if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

(c) *Notification of past-due, legally enforceable State income tax obligations.* (1) Notification to FMS of past-due, legally enforceable State income tax obligations. States notifying FMS of state income tax obligations shall do so in the manner and format prescribed by FMS. The notification of liability must be accompanied by a certification that the debt is past-due and legally enforceable and that the State has complied with the requirements contained in paragraph (c)(3) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due, legally enforceable State income tax obligations imposed by State law or procedures. The certification must specifically state that none of the debts submitted for collection by offset are debts owed by an individual who has claimed immunity from state taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation unless such claim has been adjudicated de novo on its merits in accordance with paragraph (c)(3). FMS may reject a notification of past-due, legally enforceable State income tax obligations which do not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(2) Minimum amount of past-due, legally enforceable State income tax obligations that may be submitted. FMS only will accept notification of past-due, legally enforceable State income tax obligations of $25 or more or such higher amounts as determined by FMS. States will be notified annually of any changes in the minimum debt amount.

(3)(i) *Advance notification to the debtor of the State's intent to collect by Federal tax refund offset.* The State is required to provide a written notification to the debtor by certified mail, return receipt requested, informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice must also give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past-due or not legally enforceable.

(ii) *Determination.* The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in paragraph (c)(3)(i) of this section and determine whether an amount of such debt is past-due and legally enforceable. In those cases where a debtor claims that he or she is immune from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, State procedures shall include consideration of such claims de novo on the merits unless such claims have been previously adjudicated by a court of competent jurisdiction. States shall, upon request from the Secretary of the Treasury, make such procedures available to the Secretary of the Treasury for review.

(iii) *Reasonable efforts.* Prior to submitting a debt to FMS for collection by tax refund offset the State must make reasonable efforts to collect the debt. Reasonable efforts include making written demand on the debtor for payment and complying with any other prerequisites to offset established by the State.

(4) Correcting and updating notification. The State shall, in the manner and in the time frames provided by FMS, notify FMS of any deletion or decrease in the amount of past-due, legally enforceable State income tax obligation referred to FMS for collection by tax refund offset. The State may notify FMS of any increases in the

amount of the debt referred to FMS for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(3) of this section with regard to those debts.

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced first by the amount of any past-due support assigned to a State; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency; third, by the amount of any qualifying past-due support not assigned to a State and fourth, by any past-due, legally enforceable State income tax obligation.

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d) and (e) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402(a), (c), (d) and (e) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(3) If FMS receives notice from a State of more than one debt subject to this section that is owed by a debtor to the State, any overpayment by the debtor shall be applied against such debts in the order in which such debts accrued.

(e) *Post-offset notice.* (1) When an offset occurs, FMS shall notify the debtor in writing of:

(i) The amount and date of the offset and that the purpose of the offset was to satisfy a past-due, legally enforceable State income tax obligation;

(ii) The State to which this amount has been paid or credited; and

(iii) A contact point within the State that will handle concerns or questions regarding the offset.

(2) The notice in paragraph (e)(1) of this section also will advise any non-debtor spouse who may have filed a joint return with the debtor of the steps which the non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(3) FMS will advise States of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of state income tax obligations were collected, and of the amounts collected from each debtor through tax refund offset.

(4) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due, legally enforceable State income tax obligations were collected from tax refund offsets and the amounts collected from each debtor.

(f) *Offset made with regard to a tax refund payment based upon joint return.* If the person filing a joint return with a debtor owing the past-due, legally enforceable State income tax obligation takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that FMS deduct that amount from future amounts payable to the State or that FMS otherwise obtain the funds back from the State. FMS, or the appropriate State, will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to the appropriate State. If FMS learns that an erroneous offset payment is made to any State, FMS will notify the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from future amounts payable to the State. Alternatively, upon FMS' request, the State shall return promptly to the affected taxpayer or FMS an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected taxpayer). States shall notify FMS any time a State returns an erroneous offset payment to an affected taxpayer. FMS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS to cover the full cost of offsets taken. The fee will be established annually in such amount as FMS determines to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program for purposes of collecting past-due, legally enforceable State income tax obligations reported to FMS by the States. Fees will be charged only for actual tax refund offsets completed.

(i) *Review of tax refund offsets.* In accordance with 26 U.S.C. 6402(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the State to which the amount of such reduction was paid.

(j) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402(e) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(e).

(k) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 beginning January 1, 2000.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–32679 Filed 12–17–99; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA78

Offset of Tax Refund Payments to Collect State Income Tax Obligations

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim regulations.

SUMMARY: In the rules and regulations portion of this Federal Register, the Financial Management Service is issuing an interim rule setting forth the rules governing the offset of Federal tax refund payments to collect State income tax obligations. The Internal Revenue Service Restructuring and Reform Act of 1988 authorizes the Secretary of the Treasury to reduce or offset Federal tax refund payments to satisfy delinquent State income tax obligations. The interim rule also serves as the text of this notice of proposed rulemaking.

DATES: Comments will be accepted until January 19, 2000.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Dean Balamaci, Division Director, Debt Management Services, at (202) 874–6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874–6680.

SUPPLEMENTARY INFORMATION: The interim rule in this issue of the **Federal Register** establishes 31 CFR part 285.8. For the text of the interim rule, see Offset of Tax Refund payments to collect State Income Tax Obligations, Interim rule, published in the rules and regulations section of this issue of the **Federal Register**.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this proposed rule only impacts individuals who owe delinquent income tax debt to States and receive a Federal tax refund payment. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedures, Claims, Debts, Privacy, Taxes.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–32680 Filed 12–17–99; 8:45 am]

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federal register

Monday
December 20, 1999

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting; Regulations Designed to Reduce the Mid-Continent Light Goose Population; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF85

Migratory Bird Hunting; Regulations Designed To Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Fish and Wildlife Service regulations based on recent Congressional action that effectively reinstated regulations intended to reduce the population of mid-continent light geese (MCLG). The new law authorizes the use of additional hunting methods (electronic calls and unplugged shotguns) to increase take of MCLG. In addition, a conservation order for the reduction of the MCLG population was authorized.

DATES: This rule is effective on December 20, 1999, and shall be in force until May 15, 2001, at the latest.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Service (or ''we'') promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of mid-continent light geese and established a conservation order for the reduction of the MCLG population. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in a United States District Court by the Humane Society of the United States (HSUS) and other groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we published a Notice of Intent to begin immediate preparation of the EIS (May 13, 1999; 64 FR 26268). Subsequent to this action, we withdrew the regulations promulgated on February 16, 1999 (June 17, 1999; 64 FR 32778). On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Act), which effectively reinstated the MCLG regulations that we withdrew on June 17, 1999. The Act was signed by the President on November 24, 1999 (Pub. L. 106–108). The Act stated that, ''the rules published by the Service on February 16, 1999, * * * shall have the force and effect of law.'' (Section 3(a)(1)). In addition, it provided that, (t)he Secretary, acting through the Director * * * shall take such action as is necessary to appropriately notify the public . . .'' We have determined that amending the CFR by use of this document is the most appropriate method.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as mid-continent light geese (MCLG). They are referred to as ''light'' geese due to the light coloration of the white-phase plumage form, as opposed to ''dark'' geese such as the white-fronted or Canada goose. We include both plumage forms of geese (white, or ''snow,'' and dark, or ''blue'') under the designation light geese. MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its arctic and subarctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation.

We have attempted to curb the growth of the total MCLG population by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in the MCLG population, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested) has declined despite evidence that the actual number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the past management strategies were not sufficient to stabilize or reduce the population growth rate.

On February 16, 1999, we published rules that: (1) Authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, several groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10, and that an EIS should have been prepared prior to implementation of the rules. In his memorandum opinion, the judge indicated that ''the scientific evidence regarding the overpopulation of snow geese strongly favors FWS'' and that we had exercised a reasonable use of our authority under the Migratory Bird Treaty Act to initiate population control measures. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we decided to withdraw the regulations and begin immediate preparation of the EIS. On August 30, 1999, we published a schedule of nine public scoping meetings to receive public input on the issues and management alternatives that should be analyzed in the EIS. The public comment period for the scoping process ended on November 22, 1999. We anticipate publication of a draft EIS in late winter of 2000.

On November 10, 1999, Congress passed and on November 24, 1999, the President signed into law the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) to ''reduce the population of mid-continent light geese,'' and ''to assure the long-term conservation of mid-continent light geese and the biological diversity of the

ecosystem upon which many North American migratory birds depend'' (Pub. L. 106–108). The Act further states that, ''the rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 FR 7517–7528) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 FR 7514–7528), shall have the force and effect of law.'' The Act instructed the Secretary of Interior, acting through the Director of the Service, to take such action as is necessary to appropriately notify the public of the force and effect of the rules referenced above. The Act remains in effect until, ''the latest of—

(A) The effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;

(B) The date of the publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(C) May 15, 2001.''

The Act further directs the Secretary to, ''prepare, and as appropriate implement, a comprehensive, long-term plan for the management of mid-continent light geese and the conservation of their habitat.'' The Act requires that, ''The plan shall apply principles of adaptive resource management and shall include—

(1) A description of methods for monitoring the levels of populations and the levels of harvest of mid-continent light geese, and recommendations concerning long-term harvest levels;

(2) Recommendations concerning other means for the management of mid-continent light goose populations, taking into account the reasons for the population growth specified in section 102(a)(3);

(3) An assessment of, and recommendations relating to, conservation of the breeding habitat of mid-continent light geese;

(4) An assessment of, and recommendations relating to, conservation of native species of wildlife adversely affected by the overabundance of mid-continent light geese, including the species specified in section 102(a)(5); and

(5) An identification of methods for promoting collaboration with the Government of Canada, States, and other interested persons.''

Public Comment

We are establishing this final rule without the standard notice for public comment. As required by the Administrative Procedure Act (5 U.S.C. 553(b)(B)), we have found that the notice and public procedure required by the APA are impracticable, unnecessary, and contrary to the public interest for the following reasons: (1) We are reinstating the rule at the direction of Congress; (2) public comment can not change the Congressional action; and (3) providing an unnecessary comment period at this time might preclude some affected States from implementing the expanded hunting methods and conservation order on time.

Effective Date

Under 5 U.S.C. 553 (d)(3), we find good cause to make the rule effective upon publication because, for the following reasons, it is unnecessary and not in the public interest. Reinstatement of these rules is being done as a result of a directive contained in law. We are reinstating rules with regard to light geese that were in place previously and which were adopted after notice and opportunity for public comment. In addition, under 5 U.S.C. § 553 (d)(1), this is a substantive rule that relieves the current restrictions on taking light geese.

Required Determinations

We published all of the required determinations in the February 16, 1999, final rules (64 FR 7507; 64 FR 7517).

Authorship. The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons given in the preamble, we hereby amend Parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 is revised to read as follows:

Authority: 16 U.S.C 703–712; 16 U.S.C. 742 a–j; Pub. L. 106–108.

2. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

§ 20.22 [Amended]

3. In § 20.22, the phrase ''except as provided in part 21'' is added following the word ''season'.

PART 21—[AMENDED]

4. The authority citation for part 21 is revised to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

5. Subpart E, consisting of § 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation order for mid-continent light geese.

(a) Which waterfowl species are covered by this order? This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the Central and Mississippi Flyways (mid-continent light geese).

(b) In what areas can the conservation order be implemented? (1) The following States, or portions of States,

that are contained within the boundaries of the Central and Mississippi Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section are closed to the conservation order after 10 March of each year: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska, to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas Counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 185 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take mid-continent light geese after 10 March of each year within the Guadalupe WMA. If at any time we receive evidence that a need to close the areas in this paragraph (b)(3) no longer exists, we will publish a proposal to remove the closures in the **Federal Register**.

(c) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, mid-continent light geese under the following conditions:

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 30 of each year to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

(d) What is required for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations, and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possess whatever permit or other authorization(s) required for such activities by the State or Tribal government concerned.

(2) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants acting under the authority of this section must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low-floating device having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it will be a violation of this paragraph for any person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, ''baiting'' means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them; and ''baited area'' means any area where shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such

corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that section do not apply to participants acting under this order.

(e) Under what conditions would the conservation order be revoked? The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time we receive evidence that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The recordkeeping and reporting requirements imposed under regulations established in this subpart E will be used to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take Mid-continent light geese within the guidelines provided by the Service.

Dated: December 10, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–32685 Filed 12–17–99; 8:45 am]

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federal register

Monday
December 20, 1999

Part V

Department of Labor

Occupational Safety and Health Administration

Dixie Divers, Inc.; Grant of Permanent Variance; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–97–1]

Dixie Divers, Inc.; Grant of Permanent Variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Grant of permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to Dixie Divers, Inc. (Dixie). The permanent variance is from the Occupational Safety and Health Administration (OSHA) requirements for decompression chambers during mixed-gas diving operations, including paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426.

The permanent variance covers recreational diving instructors and diving guides employed by Dixie. Using both classroom instruction and practice dives, recreational diving instructors train novice divers individually or in small groups in recreational diving knowledge and skills, including conventional diving procedures and the safe operation of diving equipment. Dixie's recreational diving instructors accompany students during practice dives, which vary in depth from a few feet of sea water (fsw) to 130 fsw, and last between 30 minutes and one hour. Diving guides (who may also serve as recreational diving instructors) lead small groups of trained sports divers to local undersea locations for recreational purposes; the guides select the diving locations and provide the sports divers with information regarding the dive site, including hazardous conditions and safe diving practices. While leading divers to a dive site, the guides dive to a maximum depth of 130 fsw for periods of 30 minutes to one hour.

The permanent variance specifies the conditions under which Dixie's recreational diving instructors and diving guides may conduct their underwater training and guiding tasks using open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA) supplied with a breathing gas consisting of a high percentage of oxygen (O_2) mixed with nitrogen, and without a decompression chamber near the dive site. These conditions address: The requirements for SCUBA equipment, including carbon-dioxide canisters, counterlungs, moisture traps, moisture sensors, carbon-dioxide and O_2 sensors, and information modules; depth limits for diving operations; use of nationally-recognized no-decompression limits and O_2-exposure limits; the O_2 and nitrogen composition of the breathing-gas mixture; procedures and equipment for producing and analyzing breathing-gas mixtures; emergency-egress procedures and systems; management of diving-related medical emergencies; procedures for maintaining diving logs; use of decompression tables and dive-decompression computers; and training requirements for recreational diving instructors and diving guides.

DATES: The effective date of the permanent variance is December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Information and Consumer Affairs, Room N3647, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone: (202) 693–1999.

Additional information also is available from the following Regional and Area Offices:

Regional Office:

U.S. Department of Labor—OSHA, 61 Forsyth St., SW., Atlanta, GA 30303, Telephone: (404) 562–2300

Area Offices:

U.S. Department of Labor—OSHA, 5807 Breckenridge Parkway, Suite A, Tampa, FL 33610, Telephone: (813) 626–1177

U.S. Department of Labor—OSHA, 8040 Peters Road, Building H–100, Jacaranda Executive Court, Fort Lauderdale, FL 33324, Telephone: (954) 424–0242

U.S. Department of Labor—OSHA, Ribault Building, suite 227, 1851 Executive Center Drive, Jacksonville, FL 32207, Telephone: (904) 232–2895

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The following Table of Contents identifies the major sections under ''Supplementary Information.'' To understand fully the information presented in the following sections, we recommend reviewing the 40 conditions of the permanent variance listed below under section VI.

II. Background

Dixie Divers, Inc. (Dixie) applied for a permanent variance from paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426 under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11. These paragraphs address the availability and use of decompression chambers during mixed-gas diving operations.

Dixie operates six diving schools, either directly or as franchises. The schools employ 18 skilled and experienced recreational diving instructors to train novice divers in recreational diving knowledge and skills. The same 18 employees also serve as diving guides and lead groups of sport divers to local diving sites for recreational purposes. (We also refer to recreational diving instructors and diving guides jointly as ''employees'' or, more generally, as ''divers.'')

As recreational diving instructors, the employees train recreational diving students in conventional diving procedures and the safe operation of diving equipment. The diving students may use an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA) during these training dives. [1] SCUBAs supply divers with compressed air or a breathing gas consisting of a high percentage of oxygen mixed with nitrogen or another inert gas. [2]

Dixie's training program for diving students involves both classroom instruction and practice dives in which the employees accompany diving students to maximum depths of 130 feet of sea water (fsw). These dives last between 30 minutes and one hour. During these dives, the recreational diving instructors provide underwater

[1] The acronym for ''self-contained underwater breathing apparatus'' is ''SCUBA.'' The term ''SCUBA'' refers to open-circuit diving equipment alone, or to open-circuit, semi-closed-circuit, and closed-circuit diving equipment combined. The term ''rebreather'' refers to semi-closed-circuit or closed-circuit diving equipment alone or combined; this diving equipment recycles part or all of the exhaled breathing gas into the system that delivers the breathing gas to the diver.

[2] The abbreviation ''O_2'' means ''oxygen,'' while the phrase ''nitrox breathing-gas mixture'' or the term ''nitrox'' refers to a breathing-gas mixture composed of nitrogen and O_2 in varying proportions.

instruction in, and allow the diving students to practice using, diving procedures and equipment. A recreational diving instructor may make as many as three to four training dives a day while training diving students either individually or in small groups.

As diving guides, the employees lead small groups of trained sports divers to local undersea diving locations for recreational purposes. The diving guide selects the diving location prior to departure, and provides the sports divers with information regarding the dive site, including hazardous conditions and safe diving practices. The divers in the recreational diving groups use open-circuit, semi-closed-circuit, or closed-circuit SCUBAs that supply compressed air or a nitrox breathing-gas mixture during the dive. During these diving excursions, diving guides dive to a maximum depth of 130 fsw for periods of 30 minutes to one hour. A diving guide may make as many as five recreational diving excursions a day.

The places of employment affected by this permanent variance are:

Dixie Divers of Boca Raton, 8241 Glades Road, Boca Raton, FL 33434
Dixie Divers of Boynton Beach, 340 North Congress, Boynton Beach, FL 33426
Dixie Divers of Deerfield, 1645 Southeast 3rd Court, Deerfield Beach, FL 33441
Dixie Divers of Key Largo, 103400 Overseas Highway, Key Largo, FL 33037
Dixie Divers of Palm Bay, 4651 Babcock Street, Northeast, Palm Bay, FL 32905
Dixie Divers of Panama City, 109B West 23rd Street, Panama City, FL 32405

III. Application for a Permanent Variance

In its application for a permanent variance (referred to as ''variance application,'' ''proposed variance,'' or ''proposal''), Dixie proposed an alternative to the decompression-chamber requirements of paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426. Paragraph (b)(2) of 29 CFR 1910.423 requires that ''[f]or any dive outside the no-decompression limits, deeper than 100 fsw or using mixed gas as a breathing mixture, the employer shall instruct the diver to remain awake and in the vicinity of the decompression chamber which is at the dive location for at least one hour after the dive (including decompression or treatment as appropriate).'' Paragraph (c)(3)(iii) of 29 CFR 1910.423 requires that the decompression chamber be ''[l]ocated within 5 minutes of the dive location,'' while paragraph (b)(1) of 29 CFR 1910.426 permits mixed-gas diving only when a ''decompression chamber is ready for use at the dive location.'' The purpose of having a decompression chamber available and ready for use at the dive site is to treat two conditions: (1) Decompression sickness (DCS), which may occur from breathing air or mixed gases at diving depths and durations that require decompression; and (2) arterial-gas embolism (AGE), which may result from overpressurizing the lungs, usually while ascending rapidly to the surface during a dive.

In the variance application, Dixie proposed to implement alternative procedures that meet or exceed the level of employee protection afforded by OSHA's decompression-chamber requirements. As an alternative to a decompression chamber, Dixie proposed to have its employees use open-circuit, semi-closed-circuit, or closed-circuit SCUBA supplied with breathing-gas mixtures that contain a fraction of O_2 ranging from 22 to 40 percent (22–40%) by volume, with the remaining breathing-gas mixture consisting of nitrogen. In addition, the partial pressure of O_2 in the nitrox breathing-gas mixture would never exceed 1.40 atmospheres absolute (ATA)[3] for any SCUBA. Dixie would use one of the following procedures to produce nitrox breathing-gas mixtures: Mixing pure nitrogen with pure O_2; removing O_2 from air for mixing with pure nitrogen; adding pure O_2 to air; or de-nitrogenating air (e.g., removing nitrogen from air using filter-membrane systems[4]). According to the proposal, Dixie would: Analyze the O_2 fraction in the breathing-gas mixtures for accuracy; institute quality-assurance procedures for the analytic processes; and use breathing-gas mixing systems rated for O_2 service whenever the highest O_2 fraction used in the mixing process exceeds 40 percent (40%). Dixie also proposed to restrict diving operations under the variance to depths of 130 fsw or less, and to use the nationally-recognized no-decompression limits and O_2-exposure limits developed by the National Oceanic and Atmospheric Administration (NOAA) and Diving Science and Technology (DSAT).

By increasing the O_2 partial pressure and decreasing the nitrogen partial pressure of the breathing-gas mixture compared to air, and by restricting dives to no-decompression limits and depths of 130 fsw or less, Dixie asserted that both the rate and the severity of DCS would be no greater for its employees than for divers who operate according to paragraph (a)(2)(i) of 29 CFR 1910.401. In addition, Dixie contended that using nationally-recognized O_2-exposure procedures would reduce the risk of O_2 toxicity among its divers to the rate expected among divers who use hyperbaric air.

Dixie proposed a number of other requirements to ensure that its employees remain within safe diving parameters, thereby avoiding DCS and AGE. These requirements included limiting the maximum carbon dioxide (CO_2) level in the inhaled nitrox breathing-gas mixture to 0.01 ATA. Dixie would control excessive CO_2 levels as follows: By using pre-packed sorbent materials to absorb CO_2 from the exhaled breathing gas prior to rebreathing; by installing sensors for detecting high CO_2 levels or conditions that could result in high CO_2 levels (such as moisture sensors to detect flooding in the breathing loop); and by using counterlungs to serve as low-breathing-resistance reservoirs for the breathing gas. In addition, Dixie proposed that its divers use an information module that provides them with critical dive information (e.g., gas pressures, water-temperature); the required information would vary with the type of SCUBA. For rebreathers, visual or auditory warning devices would alert the diver to significant equipment problems (e.g., solenoid failure, low battery levels) or deviations from established diving parameters (e.g., diverging from the planned O_2 levels). Closed-circuit rebreathers would need to operate using a gas-controller package, a manually-operated gas-supply bypass valve, and separate O_2 and diluent-gas cylinders.

Dixie proposed a number of other conditions to safeguard its divers. For emergencies involving SCUBA malfunctions that could endanger diver health and safety (e.g., high CO_2 levels), the proposed variance required that Dixie have a reliable ''bail-out system'' available. The bail-out system would need to provide a separate supply of

[3] ATA, as used here, is the partial pressure of a constituent gas in the total pressure of a breathing gas. If the percentage of the constituent gas in the breathing gas remains constant throughout a dive, its partial pressure or ATA, increases in proportion to increases in diving depth.

[4] Filter-membrane systems produce nitrox breathing-gas mixtures in two steps: First, they route air through filters to remove hydrocarbons and other contaminants, then they pass the decontaminated air through membranes that transfer O_2 across the membrane fibers at higher rates than nitrogen (hence, ''de-nitrogenating air''). As the rate of air flow across the membrane fibers increases, the resulting ratio of O_2 to nitrogen also increases. Under the permanent variance, a filter-membrane system will reduce the hazards associated with producing high-O_2 breathing-gas mixtures because the proportion of O_2 in the system will never exceed 40 percent (40%).

breathing gas to the second stage of the SCUBA regulator; when rebreathers are used, the bail-out system could deliver a diluent supply of breathing gas to the second stage of the regulator. Other protective conditions, which refined or emphasized existing requirements currently specified in OSHA's Commercial Diving Operations Standard (CDO Standard), included the following: Maintaining decompression tables and diving logs at the dive site; assuring the availability of personnel, facilities, and equipment to treat DCS and AGE; and providing quality control of diver training.

In summary, Dixie stated that the occurrence and severity of DCS would be minimal when its divers breathe nitrox gas mixtures, while the risk of AGE would be negligible when they use the equipment and procedural safeguards specified in the variance application. Consequently, divers who use SCUBAs according to the proposed variance would experience a level of DCS and AGE that is equal to, or lower than, the level experienced by recreational diving instructors who dive under the conditions specified by the exemption to the CDO Standard at 29 CFR 1910.401(a)(2)(i). These conditions allow for the use of compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. Dixie asserted, therefore, that it should not have to maintain a decompression chamber at the dive location for its recreational diving instructors and diving guides when it complies with the conditions specified in the variance application.

In a **Federal Register** notice published on October 31, 1997, we provided the public with a copy of Dixie's variance application (62 FR 58995). This notice invited interested parties, including affected employers and employees, to submit written comments, data, views, and arguments regarding the variance application. In addition, the notice informed affected employers and employees of their right to request a hearing on the variance application. At the request of several parties, we extended the comment period for this notice until March 2, 1998 in a **Federal Register** announcement dated January 6, 1998 (63 FR 579).

IV. Comments on the Proposed Variance

We received 123 comments in response to the two **Federal Register** notices. Of this total, two comments (Exs. 2–98 and 2–115) were duplications, and one comment (Ex. 2–112) consisted solely of a request to extend the comment period. (Exs. 6–1 to 6–17 also were requests to extend the comment period.) Two additional comments (Exs. 2–118 and 2–119) requested a hearing on the proposal. We denied these hearing requests because neither of the two requestors employed recreational diving instructors, the subject of this variance application. OSHA received 103 comments that were general, non-specific endorsements of the variance application; the vast majority of these comments varied only slightly in content. The remaining 15 commenters submitted detailed comments regarding the conditions and issues specified in the variance application.

We have organized our discussion of the substantive comments to the variance application into six parts. Comments concerning proposed section I (Background) are in Part 1, while Part 2 consists of comments made about the conditions specified in proposed section II (Proposed Alternative). Part 3 discusses comments made regarding proposed section III (Rationale for the Proposed Alternative), and Part 4 presents comments to the issues raised in proposed section VI (Issues). No commenters addressed sections IV and V of the variance application, titled ''References'' and ''Additional Information'' respectively. Part 5 consists of general and miscellaneous comments. Throughout each of these five parts, we explain the actions we are taking with regard to individual comments or groups of comments. The last part, Part 6, describes refinements to the proposed variance that we have made in developing the permanent variance; these refinements are based upon our interpretation of the proposed conditions and our overall review of the record.

We and other parties submitted additional exhibits (Exs. 4, 4A, 5, and 7 through 13) to the docket (see Table I). These exhibits, which contain scientific and technical information, provided additional information we used in replying to comments and discussing revisions to the proposal. The principal topics covered by the exhibits are: O_2 toxicity; nitrogen narcosis; decompression procedures; the operation and use of SCUBAs; and treatment of diving-related medical emergencies. Table I below provides specific reference information on these exhibits.

TABLE I.—REFERENCE INFORMATION ON EXHIBITS 4, 4A, AND 5 THROUGH 16

Ex. No.	Reference information
4	D. J. Kenyon and R. W. Hamilton. ''Managing Oxygen Exposure when Preparing Decompression Tables.'' In: N. Bitterman and R. Lincoln (eds.), *Proceedings of the XVth Meeting of the European Undersea Biomedical Society,* pages 72–77. European Undersea Biomedical Society, September 1989.
	R. W. Hamilton. ''IV. Oxygen Physiology, Toxicity, and Tolerance.'' In: R. W. Hamilton (author), *Special Mix Diving: Part One,* pages 25–38. Hamilton Research and Life Support Technologies, March 2, 1994.
4A	R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann. *The DSAT Recreational Dive Planner: Development and Validation of No-Stop Decompression Procedures for Recreational Diving.* Diving Science and Technology, Inc., and Hamilton Research, Ltd., February 28, 1994.
5	D. Richardson (ed.-in-chief). *Proceedings of Rebreather Forum 2.0.* Diving Science and Technology, Inc., 1996.
7	R. W. Hamilton. ''Tolerating Exposure to High Oxygen Levels: *Repex* and Other Methods.'' *Marine Technology Society Journal,* volume 23, number 4, pages 19–25, December 1989.
8	R. J. Kiessling and C. H. Maag. ''Performance Impairment as a Function of Nitrogen Narcosis.'' *Journal of Applied Psychology,* volume 46, number 2, pages 91–95, 1962.
9	A. D. Baddeley. ''Influence of Depth on the Manual Dexterity of Free Divers: A Comparison Between Open Sea and Pressure Chamber Testing.'' *Journal of Applied Psychology,* volume 50, number 1, pages 81–85, 1966.
10	A. D. Baddeley, J. W. De Figueredo, J. W. Hawkswell Curtis, and A. N. Williams. ''Nitrogen Narcosis and Performance Under Water.'' *Ergonomics,* volume 11, number 2, pages 157–164, 1968.
11	W. B. Wright. ''Use of the University of Pennsylvania, Institute for Environmental Medicine Procedure for Calculation of Cumulative Pulmonary Oxygen Toxicity.'' U.S. Navy Experimental Diving Unit, Report 2–72, 1972.
12	R. J. Biersner. ''Request for Your Recommendation Regarding Acceptable Delay in Recompression Treatment of Diving-Related Medical Emergencies.'' Memorandum to Dr. Edward D. Thalmann, August 28, 1998.

TABLE I.—REFERENCE INFORMATION ON EXHIBITS 4, 4A, AND 5 THROUGH 16—Continued

Ex. No.	Reference information
13	E. D. Thalmann. Letter to R. J. Biersner Responding to the Memorandum in Ex. 12, October 5, 1998.
14	J. R. Clarke. CO_2 Canister Test Parameters and Procedure at NEDU. Attachment to U.S. Navy Experimental Diving Unit E-mail Memorandum, November 22, 1999.
15	J. R. Clarke. ''Statistically Based CO_2 Canister Duration Limits for Closed-Circuit Underwater Breathing Apparatus.'' U.S. Navy Experimental Diving Unit, Report 2–99, 1999.
16	P. B. Bennett. ''Nitrox?'' *Alert Diver,* March/April, 1998.

Part 1. Comments to proposed section I (Background).

(a) The skills and experience of, and the diving operations performed by, the applicant's divers (62 FR 58996, second column) received two comments. Both comments were primarily concerned about Dixie's recreational diving instructors and diving guides engaging in diving activity beyond the scope of the proposed variance. The Association of Diving Contractors, Inc. (Ex. 2–99) contended that recreational diving instructors and diving guides ''[engage] in services of a commercial nature,'' and implied that the conditions of the variance application would allow them to extend their commercial diving activities beyond the scope of the proposed variance.

The second commenter (Ex. 2–105) did not object to the proposed variance for no-decompression dives to depths of 130 fsw or less if they are ''of an instructional, training, or scientific nature and [do] not involve any form of salvage or underwater construction or related working tasks.'' This commenter stated that the recreational diving must ''not encompass working dives (i.e.[,] salvage, construction). This is a very [important] distinction as the commercial diving industry cannot bear the financial burden imposed by the insurance companies who would lump professional recreational instructors in with professional commercial divers.''

In reply to these commenters, we note that the permanent variance will not cover recreational diving instructors and diving guides when they engage in activities that do not involve recreational diving instruction and diving guide activities. They must comply with our CDO Standard as appropriate, including the decompression-chamber requirements, while engaged in these other activities. To ensure that Dixie understands under what conditions the permanent variance applies, we are specifying in Condition (1) (see below at section VI, titled ''Order'') that the permanent variance covers only recreational diving instructors and diving guides who are employees of Dixie Divers, Inc., and then only while they are performing as diving guides and recreational diving instructors.

(b) The background information noted that the applicant's employees ''may make as many as three or four training dives a day while training diving students'' and that ''[a] guide may make as many as five * * * excursions a day'' (62 FR 58996, second column). This background information elicited one comment. This commenter (Ex. 2–109) stated that ''[b]oth NAUI [National Association of Underwater Instructors] and PADI [Professional Association of Diving Instructors], the two largest certifying agencies in the U.S., limit instructors teaching entry-level classes to no more than two dives per day with a single class.'' The commenter also noted that ''Dixie could hire more instructors, which would lessen their time in the water, decreasing [their] nitrogen exposure, lessening their susceptibility to DCS, thus obviating the need for the variance.''

The basis for the NAUI and PADI limitations is unclear (e.g., do these limits address diver safety or training effectiveness). Nevertheless, we believe that adopting the no-decompression procedures for repetitive diving published in the 1991 NOAA Diving Manual and by DSAT (Ex. 4A) as a condition of the permanent variance will protect Dixie's recreational diving instructors and diving guides at least as well as recreational diving instructors who use compressed air supplied to open-circuit SCUBAs under no-decompression diving limits specified in paragraph (a)(2)(i) of 29 CFR 1910.401.

(c) The statement in this section that ''[e]mployees who use high-oxygen breathing-gas mixtures will be able to make more or longer repetitive-training [or] excursion dives than they would using compressed-air open-circuit SCUBA'' (62 FR 58995, third column) received one comment. This commenter (Ex. 2–109) disagreed with this statement, claiming that nitrox breathing-gas mixtures may not reduce susceptibility to DCS and that ''[w]e know of no studies or evidence to show that diving to limits on the nitrox tables while breathing nitrox produces a lower incidence of DCS than diving to limits on air tables while breathing air.''

We agree that the mathematical probability of DCS is similar for dives that result in equivalent levels of nitrogen saturation (e.g., dives made to a specific depth using air, and longer-duration dives made to the same depth using nitrox breathing-gas mixtures). Accordingly, for dives made using nitrox breathing-gas mixtures, the risk of DCS is lower only when these dives are at the same depths and for the same durations as the air dives. Note, however, that Condition J of the proposed variance limits the risk of DCS by requiring that divers remain within the no-decompression limits of NOAA's decompression tables, or other tables or formulas that Dixie demonstrates are equally effective in preventing DCS.

(d) We stated in the ''Background'' section of the proposed variance that ''[a]s a result [of using nitrox breathing-gas mixtures], the mathematical probability of developing decompression sickness (DCS) is reduced compared to divers who use compressed air under the same diving conditions (i.e., depth, bottom time, and descent and ascent rates)'' (62 FR 58997, first column). This statement elicited two comments. The first commenter (Ex. 2–98) stated that high-O_2 nitrox breathing-gas mixtures will result in a reduced risk of DCS when used at the same depths and for the same durations as air, but only if the divers use the depth and duration limits specified for air decompression and do not extend the duration of the dive. The reduction in risk occurs because the nitrogen partial pressure in the nitrox breathing-gas mixture is less than the partial pressure of nitrogen in air at the specified depth. The second commenter (Ex. 2–109) asserted that Dixie has economic incentives to extend the duration of dives.

We believe these commenters are correct that extending the duration of dives using high-O_2 nitrox breathing-gas mixtures would increase the risk of DCS. However, we conclude that the

resulting risk would be comparable to using the equivalent partial pressure of nitrogen in air for that extended period. The basis for this conclusion is the equivalent-air-depth (EAD) formula published by NOAA, which is the nation's lead Federal agency for developing mixed-gas decompression schedules used in scientific and technical diving operations. According to NOAA, EAD ''is the depth at which air will have the same nitrogen partial pressure as the [oxygen-]enriched mix has at the depth of the dive'' (1991 NOAA Diving Manual, page 15–7). NOAA applies its EAD formula in determining what equivalent air decompression limits to use with nitrox breathing-gas mixtures, and assumes that equivalent nitrogen partial pressures and dive durations will result in similar DCS risk. However, to provide Dixie's divers with an added margin of safety against DCS, the permanent variance requires that the partial pressure of nitrogen in the high-O_2 nitrox breathing-gas mixture used for a specific dive duration must never exceed the no-decompression limits for the equivalent partial pressure of nitrogen in air for that same duration published in the 1991 NOAA Diving Manual.

Part 2. Comments to proposed section II (Proposed Alternative).

(a) Conditions A.1 and A.2 of the proposal, which specified requirements for CO_2 scrubbers, CO_2 sensors, moisture traps, moisture sensors, and over-pressure valves, received a number of comments. Several commenters (Exs. 2–98, 2–99, 2–105, and 2–117) pointed out a typographical error in the stated CO_2 level in Condition A.1. The correct level is 0.01 ATA, not 0.1 ATA, and we have corrected it in the permanent variance.

Condition A.1 in the proposed variance (Condition (4) in the permanent variance) stated that rebreathers must use commercially-available, pre-packed, disposable scrubber cartridges or an equally effective alternative. Three commenters (Exs. 2–101, 2–105, and 2–114) took exception to the requirement that CO_2 scrubbers must use sorbent cartridges that are commercially available, pre-packed, and disposable. They contended that such cartridges are not available for some rebreathers and, when available, are expensive. They also argued that rebreather manufacturers do not require pre-packed, disposable cartridges because many divers manually fill and pack most rebreather canisters. One commenter (Ex. 2–105) stated that ''no scientific evidence [shows that] a disposable[,] pre-packaged canister would perform safer or with greater efficiency than one packed by the user.'' Another commenter (Ex. 2–117), however, stated that ''[u]se [of disposable scrubber cartridges] in rebreathers reduces return to service time and reduces human error during servicing,'' and that [several manufacturers] have canisters that simplify replacement of sorbent material, while [at least one manufacturer] uses a disposable cartridge.''

In reply to these commenters, we note that Condition A.1 in the proposed variance allowed Dixie to use an alternative to pre-packed CO_2-sorbent materials, including manually-filled cartridges; Condition (4)(b) in the permanent variance will also permit this alternative, if it is acceptable to the rebreather manufacturer. However, Dixie bears the burden of demonstrating to us that its manually-filled cartridges are at least as effective as pre-packed sorbent materials in removing CO_2 from the breathing loop; Dixie likely would get this information from the rebreather manufacturer.

Proposed Condition A.2 required the use of CO_2 sensors. One commenter (Ex. 2–25) endorsed this proposed requirement for closed-circuit rebreathers, but claimed these sensors were unnecessary for semi-closed-circuit rebreathers because these rebreathers ''are regularly venting gas from the system which is replaced with high oxygen content gas * * * to prevent the buildup of carbon dioxide.'' We believe that CO_2 sensors are necessary for semi-closed-circuit rebreathers because divers can ''overbreathe'' these rebreathers. Overbreathing occurs when the diver's breathing rate is faster than the rate at which fresh breathing gas enters the inhalation bag; consequently, overbreathing causes the diver to rebreathe exhaled gas containing elevated levels of CO_2. The information in Ex. 5 (pages P–19 through P–22) supports this conclusion. Therefore, CO_2 sensors enable divers to detect increased CO_2 before it reaches hazardous levels.

The commenter in Ex. 2–98 endorsed the use of CO_2 sensors, but claimed that this technology is ''currently unavailable even in the current U.S. Navy rebreathers.'' Two other commenters (Exs. 2–105 and 2–114) also asserted that continuously-functioning CO_2 sensors are not available commercially. However, another commenter (Ex. 2–117) contradicted these assertions; this commenter stated that CO_2 sensors are available in several rebreathers.

Four commenters (Exs. 2–99, 2–106, 2–113, and 2–114) claimed that few, if any, rebreathers on the market met proposed Conditions A.1 and A.2. One of these commenters (Ex. 2–106) stated, ''[M]any of the specifications for rebreathers represent the manufacturer-specific features of an intended unit that was never brought forward as a production model. We also manufacture diving rebreathers and protest any regulation that would arbitrarily bias compliance to one model.'' Four other commenters contended that the proposed variance favors or enhances the competitive position of one or more rebreather manufacturers (Exs. 2–99, 2–101, 2–105, and 2–114); no commenter, however, indicated which manufacturer(s) would benefit. One commenter (Ex. 2–114) stated that ''[implementing the proposed variance] would put every dive store and instructor who teaches rebreather diving in the U.S. out of business,'' and claimed that ''this [proposed] variance would in essence be a restraint of trade.''

The information provided in Ex. 2–117 demonstrates that the required components are commercially available and used in several existing rebreathers. Other evidence in the record (Ex. 5, page 6–4) also shows that effective CO_2 sensors are commercially available for closed-circuit rebreathers. We find that each proposed condition is necessary for diver safety, and that Dixie can either purchase rebreathers, or retrofit its existing rebreathers, to meet these conditions. In addition, we observe that no commenter found that any required component was unsafe.

While the proposed variance did not require any CO_2 alarms, the commenter in Ex. 2–98 recommended that CO_2 sensors activate two alarms: The first alarm when the inhaled CO_2 partial pressure is at 0.005 ATA (3.8 mmHg), to warn divers that they are approaching the upper CO_2 limit; and the second alarm when inhaled CO_2 reaches the partial pressure limit of 0.01 ATA (7.6 mmHg), to alert the diver to terminate the dive immediately. We agree with much of this comment, but we believe that once the alarm is activated at a CO_2 partial pressure of 0.005 ATA, it must continue to provide a visual or auditory warning to the diver to take corrective action or terminate the dive before reaching the maximum CO_2 limit of 0.01 ATA. The use of an activation level is similar to the action-level requirement found in many of OSHA's standards for toxic substances. Therefore, the permanent variance requires Dixie to

integrate the CO_2 sensors with an alarm (either visual or auditory) that operates continuously at and above a CO_2 partial pressure of 0.005 ATA.

The proposed variance did not specify calibration requirements for CO_2 sensors. Nevertheless, the commenter in Ex. 2–98 stated that any CO_2 sensor adopted for use in rebreathers must be ''tested both in the laboratory and in manned diving trials,'' and that the ''[d]ata from these trials must support [the] accuracy, reliability and ruggedness'' of CO_2 sensors. While this commenter did not specify a protocol or criteria for testing these factors, we agree that, at a minimum, Dixie must determine the accuracy of CO_2 sensors before its divers use them. Such a determination is necessary to enable Dixie to eliminate sensors that are unreliable or that cannot function under rugged diving conditions. Therefore, in developing provisions for calibrating and maintaining the accuracy of CO_2 sensors (see Condition (9) in the permanent variance), we have adopted the requirements that Dixie specified for O_2 sensors in Condition A.4 of the variance application, with one major revision: Instead of using an accuracy of 1 percent (1%) by volume, Condition (9)(c) of the permanent variance requires that CO_2 sensors be accurate ''to within 10 percent (10%) of a CO_2 concentration of 0.005 ATA or less,'' based on the comments in Ex. 2–98. Using a test or standard gas containing a CO_2 concentration of 0.005 ATA or less will ensure that the sensors can accurately detect CO_2 levels that can be harmful to Dixie's divers. Additionally, in view of the harmful effects that can result from high levels of CO_2, we consider a maximum error rate of no more than 10 percent (10%) of a CO_2 partial pressure of 0.005 ATA to be within acceptable limits.

The commenter in Ex. 2–98 also argued that, as an alternative to CO_2 sensors, ''the breathing apparatus manufacturer [must] produce data from manned trials that substantiate [the] operational CO_2 canister-duration limits over the entire depth, water temperature, and exercise range for which the breathing apparatus is designed. Furthermore, the manufacturer must clearly state what these limits are.'' While the proposed variance did not mention such an alternative, we agree with the general approach recommended by this commenter. However, we believe that valid and reliable data for determining CO_2-sorbent replacement schedules can be obtained from carefully controlled and executed testing protocols that use breathing machines instead of divers to evaluate the canisters. Therefore, Condition (10)(a)(i) of the permanent variance permits Dixie to use a schedule for replacing the CO_2-sorbent material in canisters if the rebreather manufacturer developed the replacement schedule using the canister-testing protocol specified in Appendix A of this notice. We adapted this protocol from the canister-testing parameters and procedure provided by the U.S. Navy Experimental Diving Unit (NEDU) (Ex. 14); NEDU is the lead federal agency for testing CO_2-sorbent replacement schedules, and the diving industry recognizes the NEDU canister-testing protocol as the industry standard. Additionally, the employer can use a CO_2-sorbent replacement schedule developed by a rebreather manufacturer only if the manufacturer analyzed the protocol results using the statistical procedures specified by NEDU (Ex. 14 and 15).

The canister-testing protocol developed by NEDU addresses the three factors recommended by the commenter in Ex. 2–98: Depth, exercise level (ventilation rate), and water temperature. Depth is the maximum depth at which a diver would use the CO_2-sorbent material, which for the permanent variance is 130 fsw. We selected three combinations of ventilation rates and CO_2-injection rates from the NEDU protocol to simulate three diverse levels of exercise (light, moderate, and heavy). The four water temperatures used in the NEDU protocol are 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively); these temperatures represent the wide range of water temperatures that Dixie's recreational diving instructors are likely to encounter. We revised the NEDU protocol slightly by: Limiting the maximum depth to 130 fsw; requiring an O_2 fraction of 0.28 in a nitrox breathing gas (this fraction being the maximum O_2 concentration permitted at this depth by the permanent variance); providing tolerance limits for water temperatures; and defining canister duration as the time taken to reach 0.005 ATA of CO_2 (the CO_2 level specified in the permanent variance at which divers are to eliminate excessive CO_2 in the breathing gas or terminate the dive). In addition, our protocol uses only mandatory language, and expressly prohibits the use of replacement schedules based on extrapolation of the protocol results. OSHA prohibits extrapolation of the protocol results because the statistical-analysis procedures developed by NEDU (Ex. 15) do not provide a method for estimating the duration of CO_2-sorbent materials beyond the results obtained during the canister-testing trials. OSHA believes this approach significantly improves the validity and reliability of the replacement schedules derived from these results. After thoroughly reviewing the NEDU canister-testing protocol and adapting it the conditions of the permanent variance, we believe that CO_2-sorbent replacement schedules based on the requirements of Appendix A of the permanent variance will enable Dixie to replace CO_2-sorbent materials in a timely manner, thereby ensuring the health and safety of its divers.

While we are confident that CO_2-sorbent replacement schedules developed according to Condition (10) of the permanent variance will protect divers under ordinary diving conditions, we believe that these schedules do not address a condition that can seriously compromise canister effectiveness: Moisture in the canister, which usually results from canister flooding. Based on our review of the record, we find that moisture traps and moisture sensors can effectively control this condition. In this regard, proposed Condition A.2 required the use of moisture traps and moisture sensors. Several commenters (Exs. 2–101, 2–105, and 2–117) claimed that existing rebreathers already use moisture traps. The commenter in Ex. 2–101 stated, without explanation, that ''making them a requirement would be restrictive.'' This commenter also asserted that moisture sensors are unnecessary because CO_2 sensors perform the same function. (The commenter did not specify the term ''function,'' but we assume that it refers to the capability to indicate canister flooding.) A second commenter (Ex. 2–105) noted that moisture sensors would be an important safety feature, but asserted that they were not available commercially. However, another commenter (Ex. 2–117) claimed that moisture sensors are available from several companies. One commenter (Ex. 2–105) noted that excessive moisture can impair electrical systems in rebreathers, and asked us to specify where to place the moisture sensors to prevent these problems.

Moisture traps are necessary to keep water out of the canisters because water leakage into canisters can substantially reduce the CO_2-absorbing properties of the sorbent material. Moisture sensors, in turn, detect excessive water or flooding inside the canister that can compromise the CO_2-sorbent material. Moisture sensors, therefore, warn the diver of hazardous water leakage into the canister. The commenters in Exs. 2–101, 2–105, and 2–117 noted that

moisture traps are available commercially and that existing rebreathers routinely use them. The information in Ex. 2–117 also indicates that moisture sensors are commercially available. While we believe that rebreather manufacturers should place moisture sensors on the inhalation side of the breathing loop, we leave the design and location of moisture sensors and moisture traps to their technical expertise. Dixie must ensure that its divers use these components consistent with the rebreather manufacturer's instructions, and that the moisture sensors alert the diver of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface. We have incorporated these conditions into the permanent variance.

In the proposed variance, Condition A.2 specified that rebreathers contain over-pressure valves. Regarding over-pressure valves, one commenter (Ex. 2–101) asked us to define the term ''over-pressure valve,'' while two commenters (Exs. 2–105 and 2–117) asserted that existing rebreathers already have over-pressure valves. One of these commenters (Ex. 2–105) noted that over-pressure valves are ''important protection to reduce the risk of [AGE] and associated pressure[-]induced injuries and [rebreather] damage.''

An over-pressure valve is a valve on the counterlung that releases breathing gas from the counterlung when the pressure reaches a set level; we have incorporated this meaning into the permanent variance. Rebreathers routinely are designed with over-pressure valves. These valves perform a critical safety function by helping to regulate breathing-gas volume and pressure.

Condition A.2 of the proposed variance also specified that Dixie use redundant (i.e., at least two) CO_2 sensors and redundant moisture sensors; it also required that these sensors function continuously. One commenter (Ex. 2–101) agreed with the proposed requirement for a continuously-functioning CO_2 sensor, but did not believe that additional CO_2 sensors were necessary. This commenter noted that both CO_2 and moisture sensors will alert the diver whenever the breathing loop, most likely the CO_2-sorbent material, is no longer capable of removing exhaled CO_2. We agree with this commenter that CO_2 and moisture sensors serve much the same purpose—to inform the diver of conditions (for example, reduced efficiency of the CO_2-sorbent material) that may cause CO_2 to accumulate in the breathing loop. By measuring the amount of CO_2 in the inhaled breathing gas (after the gas passes through the sorbent material in the canister to remove CO_2) CO_2 sensors can detect an elevated CO_2 level that may indicate depletion of the CO_2-sorbent material because of canister flooding. An elevated CO_2 level, in turn, warns the diver to take corrective action, including terminating the dive.[5] As noted previously, moisture sensors detect excessive water or flooding inside the canister that can reduce the sorbent material's capacity to remove CO_2 from the inhaled breathing gas. The independent functions performed by these sensors (i.e., a CO_2 sensor measures CO_2 in the breathing gas, while a moisture sensor detects excessive moisture in the canister) indicates that a malfunction in one sensor is unlikely to result in a malfunction in the other sensor.

Several other conditions make sensor redundancy unnecessary. First, the symptoms of excessive CO_2 do not develop as rapidly as the symptoms of O_2 toxicity;[6] consequently, a properly trained and experienced diver will be able to recognize a number of effects associated with excessive CO_2 and take appropriate action, including terminating the dive. These effects include: Reduced buoyancy (from the increased weight caused by canister flooding); shortness of breath (from CO_2 displacing O_2 in the diver's lungs); an increase in breathing resistance during inhalation (caused by difficulty moving the breathing gas through wet CO_2-sorbent material); and a large number of bubbles vented through the rebreather's exhaust valve (venting related to the increased exhaust pressure caused by exhaling against wet CO_2-sorbent material). Secondly, the permanent variance (Conditions (7) and (8)) requires that both the moisture sensor and CO_2 sensor function continuously, ensuring early detection of a CO_2-related problem by the diver. Lastly, Condition (30) of the permanent variance requires that the divers use an open-circuit emergency-egress system (a ''bail-out'' system); this system will provide the divers with the capability to shift to a known, safe, and immediately-available breathing gas, and to terminate the dive safely whenever a CO_2-related problem occurs.

Based on this record, we find that: Carbon-dioxide sensors and moisture sensors provide independent means of detecting a CO_2-related problem; symptoms related to excessive levels of CO_2 develop more slowly than the symptoms of excessive O_2; a properly trained and experienced diver will recognize the effects of excessive CO_2 in sufficient time to take correct action; the requirement that CO_2 sensors and moisture sensors be continuously functioning assures real-time detection of CO_2-related problems; and the required bail-out system provides the diver with a safe means to terminate a dive following detection of a CO_2-related problem. This record demonstrates that the proposed requirements for redundant CO_2 sensors and redundant moisture sensors are unnecessary; we believe that the only basis for requiring redundant sensors is if the rebreather manufacturer includes them in the equipment design or specifications. Therefore, we have revised the conditions accordingly in the permanent variance.

(b) Proposed Condition A.3, which required the use of flexible breathing bags (also known as ''counterlungs'') with rebreathers, elicited the following comment (Ex. 2–105):

> Not all rebreathers use breathing bags. However, they all employ some type of counter lung providing a compliant volume. Certain types of rebreathers utilize a large diaphragm or bellows assembly. There would be no purpose in mandating a particular counterlung configuration. The only regulation that could be mandated might be a minimum volumetric displacement.

We consider breathing bags to be a type of counterlung. Even though the proposed variance used the terms ''breathing bags'' and ''counterlungs'' interchangeably, we agree with the commenter that the permanent variance should not specify a particular counterlung configuration. We have revised the condition accordingly in the permanent variance. In addition, while we agree with the need to specify a minimum volumetric displacement, we believe that the rebreather manufacturer should determine this value. In this regard, Dixie must ensure that its divers use the counterlung according to the rebreather manufacturer's instructions, and the counterlung must displace enough volume to sustain the diver's respiration rate during any diving condition. We have incorporated these conditions into the permanent variance.

(c) Proposed Condition A.4 addressed ''bail-out systems,'' which are supplemental breathing-gas systems used by divers for emergency ascent to the surface if the SCUBA malfunctions. The proposed condition specified that bail-out systems must integrate the

[5] In addition, a CO_2 sensor alerts the diver to increased CO_2 levels in the inhaled breathing gas that may result from other conditions, including depleted sorbent material (saturated with CO_2) and channeling or overbreathing (exhaled air bypassing the sorbent material).

[6] The rapid onset of symptoms resulting from O_2 toxicity provides a major rationale for requiring redundant O_2 sensors.

second stage of the SCUBA regulator with either a separate supply of emergency breathing gas or, for semi-closed-circuit and closed-circuit rebreathers, a diluent supply of emergency breathing gas. Two commenters (Exs. 2–100 and 2–105) responded to the proposed condition. The first commenter (Ex. 2–100) recommended that the system contain at least 35 cubic feet of emergency breathing gas. This volume was based on maximum consumption rates related to a number of variables, including water temperature, diver's thermal protection, speed of current, lung volume, and psychological stress. The second commenter (Ex. 2–105) stated that ''[a] bail-out system is a necessity for all rebreather use.''

We agree that the bail-out system must enable the diver to terminate the dive safely under ''worst-case'' conditions. We believe, however, that the rebreather manufacturer is in the best position to determine what capacity of breathing gas is needed for safe operation of the bail-out system. In this regard, Dixie must ensure that its divers use the bail-out system according to the rebreather manufacturer's instructions. Dixie must also ensure that the bail-out system supplies sufficient emergency breathing gas to enable a diver to terminate the dive and return safely to the surface; the rebreather manufacturer can make this determination after Dixie provides the critical diving parameters (e.g., depth of dive and breathing rate). We have revised this condition accordingly in the permanent variance.

(d) Proposed Condition A.5 specified requirements for information modules, which provide divers with information about the dive, including gas pressures, dive times, and descent and ascent rates. One commenter (Ex. 2–114) stated that the information module is a dive computer, that no rebreathers are available commercially that integrate dive computers with breathing systems, and that no dive computer ''includes displays that directly warn of rebreather solenoid failure and excessive descent rates.'' In response, although we believe that it would be advantageous if dive computers included such information and warning displays, neither the proposed nor the permanent variance require it. The permanent variance requires Dixie to equip its divers with sensor and display systems that provide information on time, depth, ascent, and descent to divers who use closed-circuit rebreathers, and time, ascent, and descent information to divers who use semi-closed-circuit rebreathers. Both types of rebreathers must also have alarms or visual displays that warn the diver about excessive ascent and descent rates, as well as depth levels that are shallower than the ceiling-stop depth. The permanent variance does not require that a dive computer provide this capability.

(e) Proposed Condition B required that closed-circuit rebreathers must use the following sensors: (1) Sensors that measure supply pressures for O_2 and diluent gas; (2) depth sensors; (3) continuously-functioning and redundant temperature-compensated O_2 sensors; and (4) continuously-functioning gas-loop and ambient water-temperature sensors. One commenter (Ex. 2–114) asserted that no existing rebreathers have continuously-functioning sensors for assessing gas-loop and ambient water temperatures. A second commenter (Ex. 2–117) contradicted this assertion, claiming that ''transducers and thermocouples are readily available from numerous companies'' for sensing pressure, depth, and ambient water temperature.

We believe that temperature sensors are necessary for diver safety. Water-temperature sensors alert divers to the possibility of hypothermia. In addition, gas-loop temperature sensors and water-temperature sensors allow divers to estimate the duration of their CO_2-sorbent material. Efficiency of the CO_2-sorbent material deteriorates with decreasing temperatures (1991 NOAA Diving Manual, page 16–9). Thus, if divers are able to estimate the duration of their CO_2-sorbent material, they can judge how long they can dive even if their CO_2 sensors malfunction. Even if no existing rebreather incorporates temperature sensors as stated by the commenter in Ex. 2–114, Dixie's proposal to use such sensors will provide its divers with additional protection from temperature-related diving hazards; therefore, we have included this condition in the permanent variance.

(f) For open-circuit SCUBA, proposed Condition C specified that the concentration of O_2 must not exceed 40 percent (40%) of the breathing gas by volume, or, for any SCUBA, an O_2 partial pressure of 1.40 ATA. Three commenters (Exs. 2–104, 2–106, and 2–113) recommended that we increase the partial pressure of O_2 in the breathing-gas mixture from 1.4 to 1.6 ATA; these commenters asserted that recreational divers use the 1.6 ATA level regularly and safely, and that this use conforms to prevailing rebreather practices.

In reply to these commenters, we believe that the research data cited in the proposed variance support our conclusion that a maximum O_2 level of 1.40 ATA prevents O_2 toxicity. The commenters provided no data or studies to support a maximum O_2 exposure of 1.6 ATA, nor could we find any relevant data or study to support this recommendation for SCUBA diving. Evidence in the record (see Exs. 4, 4A, 5 (pages 3–5 through 3–15, P–15, and P–37 through P–43), and 7) also demonstrates that breathing 1.6 ATA of O_2 for extended periods increases the risk of O_2 toxicity compared to breathing 1.4 ATA of O_2. The increased risk of O_2 toxicity means that little tolerance exists for errors in O_2 control and delivery equipment (e.g., O_2 sensors, solenoids) and in calculating O_2 exposures.

One commenter (Ex. 2–106) noted that we should consider both partial pressure and the duration of a dive when determining O_2 exposure limits. Another commenter (Ex. 2–109) maintained that when they use high-oxygen breathing-gas mixtures, Dixie's recreational diving instructors and diving guides can dive for longer periods than when they use air as the breathing gas. Long dive durations extend a diver's exposure to elevated levels of oxygen, thereby increasing the diver's risk of developing O_2 toxicity, as well as DCS. Regarding the first comment (Ex. 2–106), we note that the O_2 exposure limits specified in the proposed variance address both duration and level of O_2 exposure. Similarly, in response to the second commenter (Ex. 2–109) we believe that Conditions C and E in the proposed variance address the concern about O_2 toxicity expressed in Ex. 2–109; these proposed conditions cited research studies attesting to the safety of breathing O_2 at a partial pressure of 1.40 ATA.

(g) Condition D in the proposal limited the diving depth to ''no deeper than 130 fsw, or to a maximum oxygen partial pressure delivered to the diver of 1.40 ATA, whichever is most restrictive.'' The proposed condition elicited two comments. The first commenter (Ex. 2–99) stated that the Association of Diving Contractors, a trade association for the commercial-diving industry, requires decompression chambers at the dive site for dives deeper than 80 fsw or for dives outside the no-decompression limits because ''there is still a possibility of a rapid ascent to the surface and hence, a [risk of AGE] brought on by eliminated or accelerated decompression [during] the ascent.'' The second commenter (Ex. 2–113) considered a maximum diving depth of 160 or 170 fsw to be safe.

The proposal reduced the risk of DCS resulting from ''eliminated or accelerated decompression'' to minimal

levels by requiring Dixie to ensure that its divers use nationally-recognized no-decompression diving limits. The proposal lowered the risk of AGE by including a number of procedural and equipment requirements (e.g., specified O_2 levels in the breathing-gas mixture and installation of O_2 and CO_2 sensors) that would minimize the need to make rapid (emergency) ascents to the surface during a dive; such ascents can cause AGE by overpressurizing the lungs. We believe that these proposed requirements would protect recreational diving instructors from the risks associated with DCS and AGE as well as, or better than, the provisions of 29 CFR 1910.401(a)(2)(i) (the exemption in OSHA's CDO Standard for recreational diving instructors who use open-circuit, air-supplied SCUBA).

We are not extending the depth limit to 160 or 170 fsw because we believe that doing so would place the diver at increased risk of nitrogen narcosis (as well as DCS). This increased risk would occur because the partial pressure of nitrogen in the breathing gas would be higher at 160–170 fsw than at 130 fsw. Previous research (Exs. 8, 9, and 10) demonstrates that hyperbaric air has significant narcotic effects even at 100 fsw or about 4.00 ATA (which is equivalent to a nitrogen partial pressure of 3.16 ATA). Using 28 percent (28%) O_2 at 130 fsw (equivalent to about 1.40 ATA O_2), the partial pressure of nitrogen would be 3.56 ATA, which is only slightly above the narcotic threshold specified by the previous research.

(h) Proposed Condition E established O_2-exposure limits for the breathing-gas mixtures, requiring that divers ''not exceed the 24-hour single-exposure time limits specified by the 1991 NOAA Diving Manual or other oxygen-exposure limits, such as the Diving Science and Technology (DSAT) Oxygen Exposure Table, that provide a level of oxygen-toxicity protection at least equivalent to the level of protection afforded by the 1991 NOAA Diving Manual.'' The proposed condition received two comments. One commenter (Ex. 2–98) agreed with using the NOAA O_2-exposure limits and a maximum O_2 partial pressure of 1.4 ATA, stating that these limits ''should not make the probability of oxygen toxicity * * * significantly different than when breathing air.'' At O_2 partial pressures above 1.3 ATA, this commenter recommended using the exposure durations specified in Table 15–1 of NOAA's 1991 Diving Manual. According to this commenter, using the NOAA table ''would make the probability of CNS O_2 toxicity [extremely low].'' The second commenter (Ex. 2–100) asserted that a commercial subsidiary of the Professional Association of Diving Instructors developed the DSAT O_2-exposure limits. The commenter contended that this subsidiary is not a recognized research authority and is ''motivated by profit and not necessarily the public benefit.'' According to this commenter:

> NOAA is a highly regarded and recognized source of diving research and operational protocol. If oxygen exposure limits are not to exceed the 24-hour single exposure time limits specified in the 1991 NOAA Diving Manual[,] then citing additional sources of oxygen exposure limits[] that[,] by default, can only be the same or more conservative, is unnecessary and likely confusing.

The comments in Ex. 2–98 support the maximum O_2-exposure limit of 1.40 ATA specified in proposed Condition E. We agree with the commenter that CNS toxicity is the principal basis for specifying O_2 exposure limits; accordingly, we discussed the need to prevent O_2-induced CNS toxicity in detail in the proposed variance (62 FR 58999–59000).

Regarding the comments in Ex. 2–100, we find that the O_2-toxicity protection afforded to divers by the DSAT tables under the diving conditions specified in the variance application is at least equivalent to the level of safety that they get from the O_2-exposure limits specified in the 1991 NOAA Diving Manual. The rationale provided in the proposed variance, as well as additional evidence submitted to the record (Exs. 4 and 7), support this conclusion.

We have deleted the proposed general language that would have allowed Dixie to use non-NOAA O_2-exposure limits (other than DSAT's) when these limits ''provide a level of oxygen-toxicity protection at least equivalent to the level of protection afforded by the 1991 NOAA Diving Manual.'' We believe this provision would introduce unnecessary uncertainty into the permanent variance when two adequate sources of O_2 limits are already available for Dixie's use. Accordingly, we have revised this provision so that only the O_2-exposure limits identified in the proposal are acceptable for the permanent variance; these limits are from the 1991 NOAA Diving Manual, and the Enriched Air Operations and Resources Guide published in 1995 by the Professional Association of Diving Instructors (commonly referred to as the ''1995 DSAT Oxygen Exposure Table''). If other O_2-exposure limits become available in the future, Dixie may request us to amend the permanent variance if it provides evidence that demonstrates their safety.

(i) Proposed Condition F, which required that ''[n]itrogen shall be the only inert gas used to obtain the breathing-gas mixture,'' elicited two comments. One commenter (Ex. 2–103) asserted that recreational diving instructors and diving guides ''use gas blends to increase safety,'' implying that we should allow divers to use additional inert gases in the breathing-gas mixture. The second commenter (Ex. 2–113) also noted that tri-mix breathing gases (usually consisting of O_2, N_2, and He) have been used safely by many divers.

Dixie proposed to use nitrogen as the only inert gas in the breathing-gas mixture under the specified conditions encountered by its divers (i.e., no-decompression dives to depths that do not exceed 130 fsw). We need not consider the use of other inert gases as part of Dixie's permanent variance because Dixie did not seek our approval for the use of these gases. In any case, we believe that other inert gases (e.g., helium) have limited, if any, application under the conditions of this variance.

(j) Proposed Conditions G, H, and I specified, respectively, the requirements for: Mixing and analyzing nitrox breathing-gas mixtures; compressors used to produce the nitrox breathing-gas mixtures; and SCUBAs exposed to high-pressure (pressures exceeding 300 psi) nitrox breathing-gas mixtures. These proposed conditions received four comments. The first commenter (Ex. 2–99) contended that the proposal did not provide specifications for O_2-clean systems and measurement accuracy, and did not require the delivery of pre-mixed breathing gas ''from a reliable and competent source with high standards of documented quality control in place.''

The second commenter (Ex. 2–105) asked: What is the basis for the O_2-cleaning and O_2-service requirements and the 300 psi limit; at what minimum O_2 level would these requirements apply; and how does OSHA define ''O_2 compatible.'' The commenter agreed with the use of oil-free compressors for mixing nitrox breathing-gas mixtures. The commenter noted, however, that employees who use these compressors need proper training and that ''[s]pecial consideration must be given * * * to material use, material compatibility, system design, cleaning[,] and maintenance.'' The commenter described several hazards associated with mixing nitrox breathing gases, including: Partial-pressure blending into cylinders not prepared properly for O_2 service; inducing O_2-enriched breathing-

gas mixtures into the intake of compressors not designed for this purpose; and contamination of mixtures with hydrocarbons or oil. The commenter also recommended that we permit the use of O_2 analyzers that involve processes or mechanisms other than fuel-cells (e.g., gas chromatography, thermal conductivity), stating that such analyzers are accurate and ''have been in use worldwide for many years.''

A third commenter (Ex. 2–116) made a number of recommendations to improve the safety of mixing nitrox breathing gases, including: Prohibit the use of oil-lubricated air compressors for mixing nitrox breathing gases containing 22–40 percent (22–40%) O_2; require compressor and filter-system manufacturers to certify that their equipment is safe for the gases used in the breathing mixtures; require filter-system manufacturers to certify that the equipment used to clean air (for mixing with pure O_2) produces O_2-compatible breathing gases (*i.e.,* breathing gases with low hydrocarbon levels); and require Dixie to monitor hydrocarbon contamination continuously. The commenter also submitted suggested revisions to the proposed text based on these recommendations.

In reply to the commenters who requested information on which standards we would use to ensure accurate mixing and decontamination (especially hydrocarbon removal) of nitrox breathing gases, we note that Dixie must comply with 29 CFR 1910.101 (Compressed Gases (General Requirements)) and 29 CFR 1910.169 (Air Receivers), and applicable provisions of 29 CFR 1910.134 (Respiratory Protection). We agree with the comment in Ex. 2–105 that Dixie must use only properly trained personnel to mix breathing gases, and we have revised the permanent variance accordingly.

To reduce the risk of O_2 explosions, proposed Condition I required that SCUBA using high-O_2 breathing-gas mixtures or pure O_2 at pressures exceeding 300 psi be designed for O_2 service. We derived the 300 psi limit by interpolating between the pressure limit (125 psi) for pure O_2 and the pressure limit (500 psi) for compressed air specified in paragraph (i)(3) of 29 CFR 1910.430. We note, however, that § 1910.430(i)(1) requires that equipment using O_2 mixtures exceeding 40 percent (40%) O_2 by volume be designed for O_2 service; this requirement is based on the serious explosion risk associated with these O_2 mixtures. Therefore, to reduce the risk of an O_2 explosion, we have revised the permanent variance to require that SCUBA using breathing-gas mixtures that exceed 40 percent (40%) O_2 by volume at pressures over 125 psi be designed for O_2 service.

The proposed variance explained that an O_2 analyzer that uses a fuel-cell process would be acceptable. However, O_2 analyzers based on other processes are also acceptable if they meet the requirements specified in Conditions 22 and 24(a) of the permanent variance.

We agree with the commenter in Ex. 2–116 that Dixie must only use compressors and filters that manufacturers have certified will produce O_2-compatible breathing-gas mixtures and will withstand the pressures involved. We believe these requirements substantially reduce the risk of O_2-related explosions that can occur while mixing nitrox breathing gases under high pressure. Accordingly, we have incorporated these requirements into the permanent variance. Consistent with existing requirements in our CDO Standard, the permanent variance also requires an O_2-service rating for compressors used for mixing high-pressure O_2 whenever O_2 fractions could exceed 40 percent (40%) by volume, as specified in paragraphs (i)(1) and (i)(2) of 29 CFR 1910.430.

A fourth commenter (Ex. 2–117) stated that O_2 analyzers, oil-less compressors, and filter-membrane systems are available commercially, and identified several companies that manufacture this equipment. These comments demonstrate that Dixie can readily meet the requirements in the permanent variance to use O_2 analyzers, oil-less compressors, and filter-membrane systems when mixing nitrox breathing gases for rebreathers.

(k) Proposed Condition J, which identified the no-decompression limits that Dixie must use, elicited three comments. One commenter (Ex. 2–98) asserted that using high-O_2 breathing-gas mixtures and diving in accordance with the no-decompression limits for air diving specified in the 1991 NOAA Diving Manual would reduce the risk of developing DCS. This commenter also recommended comparing other, ''equivalent,'' no-decompression limits to the NOAA limits using a method that ''give[s] acceptable prediction of DCS probability when applied to data bases * * * where the dive profile is accurately known and the outcome (DCS or no DCS) is known.'' The commenter added that ''the employer must show through adequate records that the DCS incidence using these other procedures [is] acceptably low,'' and asserted that ''an ongoing evaluation of safety through record keeping is essential.''

Another commenter (Ex. 2–109) stated that the ''DSAT [no-decompression air] tables, [which] are based on a shorter tissue half-time, predict more rapid out-gassing and therefore allow much longer repetitive dives than the Navy [no-decompression air] tables would following similar bottom times and surface intervals.'' This commenter concluded, however, that the DSAT and U.S. Navy no-decompression limits provide similar levels of diver protection.

The third commenter (Ex. 2–99) noted that the proposal did not consider ''omitted decompression'' that may occur while instructing and supervising novice divers. This commenter asserted that novice divers are ''prone to panic and thus more susceptible to an occurrence that [may require] * * * a decompression chamber on site.''

Based on these comments, we conclude that the permanent variance needs to contain specific recommendations for no-decompression limits. Therefore, we have decided to remove the provision for ''equivalent'' no-decompression limits from the permanent variance. In doing so, we have carefully reviewed the findings and recommendations of Dr. R. W. Hamilton et al. in Ex. 4A (''DSAT Recreational Dive Planner: Development and Validation of No-Stop Decompression Procedures for Recreational Diving'' or ''the Planner''). Based on evidence cited in the Planner, we find that the scientific community accepts the DSAT no-decompression tables; in addition, the program of extensive laboratory and field testing described in the Planner has demonstrated that the DSAT no-decompression tables are reliable and valid. Accordingly, the permanent variance allows Dixie to use the DSAT no-decompression tables and the no-decompression limits in the 1991 NOAA Diving Manual. Should other no-decompression limits become available in the future, Dixie may request us to amend the permanent variance. The application would need to demonstrate that the alternative no-decompression limits are at least as protective as the limits specified in the permanent variance.

In an earlier response to the commenter in Ex. 2–109 in paragraph (d) of Part 1, we stated that NOAA's EAD formula can accurately estimate the DCS risk associated with nitrox breathing-gas mixtures based on equivalent nitrogen partial pressures and dive durations used in air diving. In addition, we disagree with this commenter's recommendation to adopt the U.S. Navy's no-decompression

limits. If we were to adopt these limits, we would unnecessarily restrict a major application of rebreathers (i.e., to use high levels of O_2 in the breathing-gas mixture to extend the diving duration at a specific depth beyond the duration limit specified for air).

As previously noted, the commenter in Ex. 2–99 expressed concern about diving-related incidents among novice divers, and implied that recreational diving instructors could be placed at risk of DCS or AGE under these conditions. We find that the risk of DCS is negligible under these conditions because the recreational diving instructors and novice divers will be using the NOAA or DSAT no-decompression tables and, therefore, will have no need to decompress. If a novice diver panics and makes a rapid ascent to the surface, the recreational diving instructor has been trained and has the necessary experience to follow the novice diver to the surface in an orderly fashion, thereby avoiding AGE.

(l) Proposed Condition K.3, which specified the entries that divers must make in the diving log, received only one comment (Ex. 2–109). This commenter asked who would make the entries, stating that ''frequently, other than the paying passengers * * * there is only the boat captain and the instructor [or] guide.'' Dixie Divers consists of several small commercial diving businesses that may have difficulty finding an employee to make entries in the diving log. After we published the proposed variance, Dixie asked us to revise the proposed condition to permit non-employees to make entries in the log. In addition, Dixie asked for a similar revision to proposed Condition L, which required the employer to verify the availability of treatment resources for medical emergencies, and to enter the verification in the diving log. Recognizing that any properly-qualified individual can make such entries, we have revised these provisions to permit Dixie to use non-employees to perform these tasks, but only after verifying their qualifications to do so. As the employer, Dixie will be responsible for assuring that the entries are made, regardless of who makes them.

(m) Proposed Condition L required that Dixie confirm, on a daily basis before commencing diving operations, the availability of resources to treat a diving-related medical emergency, including ''transportation * * * capable of delivering [an injured diver] to the decompression chamber within two hours of the injury.'' A commenter (Ex. 2–109) asked, ''Does this imply that if they are told a chamber is down or the Coast Guard can't confirm readiness, that they'll cancel the diving for that day?'' This commenter cautioned that ''if an accident happens after a significant amount of time has passed since the call, [a decompression chamber] may not be available at that time [because it's in use or undergoing maintenance].'' Based on these comments, we have clarified the requirement in the permanent variance by specifying that Dixie must confirm that the required treatment resources are ''available during each day's diving operations.''

This commenter (Ex. 2–109) also argued that a decompression chamber should be within one hour from the dive site, instead of two hours, because of the ''relatively short distance off-shore that most Florida diving is done,'' and any ''[t]ime delay in getting an injured diver to a chamber can severely lessen the chances of full recovery from DCS.'' In reviewing this recommendation, we asked the Divers Alert Network (DAN) for assistance. DAN is the nation's leading private-sector organization providing DCS treatment recommendations to recreational divers and diving guides.

With DAN's assistance, we identified 13 locations in Florida where suitable decompression chambers (6.0 ATA pressure capability, dual-lock, multiplace) are available to the public for treating diving-related medical emergencies. These chambers are in Pensacola, Panama City, Tallahassee, Gainesville, Jacksonville, Inverness, Orlando, Tampa, Fort Myers, Miami, Tavernier, Marathon, and Key West. These 13 decompression-facility sites are within two hours transit time of any diving location in Florida, including off-shore, state-controlled waters. This transit time assumes the use of surface vehicle transportation traveling at the maximum legal speed limit, and includes 30 minutes to make land when diving off-shore. In response to the commenter's statement that increases in treatment delay will ''severely lessen the chances of full recovery from DCS,'' we sought evidence with respect to one-hour or two-hour treatment delays from Dr. Edward D. Thalmann (Ex. 12). Dr. Thalmann is a world-renowned expert in treating diving-related medical emergencies among recreational divers; he is also the author of a number of scientific publications that address the causes and treatment of diving-related medical emergencies, especially DCS.

In his reply (Ex. 13), Dr. Thalmann compared the risk of AGE and DCS among recreational divers who breathe air as opposed to nitrox. He then estimated the maximum delay in decompression treatment that would not worsen the treatment outcome. Dr. Thalmann noted that AGE is the most life-threatening diving-related medical emergency that can occur and that, to treat the most serious cases, a decompression chamber should be available at the dive site. He recognized that this recommendation went far beyond our existing requirements for some types of recreational diving (e.g., recreational diving instruction covered by paragraph (a)(2)(i) of 29 CFR 1910.401). In this regard, Dr. Thalmann stated that AGE ''is a rare occurrence and can be avoided with proper training and experience.'' Dr. Thalmann concluded that AGE ''is essentially independent of the time at depth'' and that ''there is no evidence * * * [to] suggest that the occurrence and outcome of [AGE] would be any different breathing a [n]itrox mixture [other] than air.''

Regarding DCS, Dr. Thalmann asserted that research data show that the EAD approach (see the discussion above under paragraph (d) of Part 1) is valid for computing no-decompression limits for O_2 partial pressures as high as 1.5 ATA. Based on this research and his field experience, Dr. Thalmann stated that DCS associated with breathing a nitrox gas mixture ''should not be substantially different in incidence and severity compared to diving on air[,] provided the [n]itrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA's] EAD [formula].'' Dr. Thalmann concluded that, within these constraints, ''there is no rationale for having different requirements for recompression chamber availability for air and [n]itrox no-decompression diving.''

In addressing treatment delay, Dr. Thalmann reviewed available research studies, as well as data from DAN. According to Dr. Thalmann, the DAN data ''apply to recreational diving only where the vast majority of diving is within no-decompression limits.'' The results show that, for both pain-only DCS and DCS with severe neurological symptoms, a treatment delay of four hours can occur without diminishing treatment success (i.e., complete relief of symptoms). In conclusion, Dr. Thalmann stated, ''There is no significant body of evidence to suggest that, so long as one is diving within accepted no-decompression limits breathing air or [n]itrox, having access to a recompression facility within 4 hours is inadequate.''

Dr. Thalmann's reply demonstrates several points: (1) The risk of AGE and DCS while breathing air or a nitrox gas

mixture should not differ when the dive conforms to accepted no-decompression limits computed using the EAD approach; (2) maintaining a decompression chamber at the dive site to treat AGE is unnecessary and impractical because AGE is a rare occurrence that proper training and diving experience can prevent; and (3) as much as a four-hour delay in treating DCS does not diminish treatment outcomes. Based on this evidence, as well as a complete review of the existing record, we have decided to keep the provision permitting a two-hour timeframe for treating DCS, as proposed by Dixie.

As part of his reply, Dr. Thalmann also recommended that we revise the phrase ''within two hours of the injury'' in proposed Condition L.1 to read ''[2] hours after it is recognized that symptoms of [a decompression incident] are present.'' We acknowledge that the proposed language was unclear, but we also believe that the recommended wording may be confusing as well. Therefore, we have adopted new language in the permanent variance that expresses the requirement in terms of the maximum delay permitted in transporting the injured diver to a suitable decompression chamber; the revised language reads, ''* * * within two (2) hours travel time from the dive site.''

(n) Proposed Condition N specified that Dixie was responsible for initial treatment of diving-related medical emergencies, and that it had to ensure that ''two personnel, one of whom shall be a diver employed by [Dixie] and both of whom are qualified in first-aid and the administration of treatment oxygen'' were available at the dive site for this purpose. Two commenters responded to this provision. The first commenter (Ex. 2–100) stated that the provision appears to be ''an attempt by Dixie Divers * * * to use the process to gain an unfair advantage in the recreational diving market by requiring all diving operations to contract with a 'diver employed by the applicant.' '' The second commenter (Ex. 2–109) asserted that this requirement would be difficult to satisfy because the ''typical crew on a Florida boat is [a] captain and instructor.'' Dixie, as a small business with few employees, supported the second commenter's assertion, and requested that it be permitted to use qualified non-employees to meet this requirement.

In reply to these comments, we note that Dixie and all other employers engaged in commercial diving operations must already provide, as appropriate, on-site support personnel to perform a variety of tasks (see, e.g., the requirements in paragraph (c) of 29 CFR 1910.410 and paragraph (c)(2) of 29 CFR 1910.426). These personnel can also perform duties as specified in proposed Condition N. We recognize, however, that the main purpose of this provision is to ensure that properly-qualified personnel are available, regardless of their employment status. Therefore, we have revised this provision to permit Dixie to use non-employees for first-aid and O_2 treatment. However, Dixie may do so only if it verifies their qualifications to perform these tasks before it starts the day's diving operations.

(o) Proposed Condition O specified the training requirements for Dixie's recreational diving instructors and diving guides, including the requirement that an industry-recognized training agency certify that the divers are capable of using the diving equipment and breathing-gas mixtures needed for their recreational diving operations. The National Association of Underwater Instructors (NAUI) (Ex. 2–100) noted its affiliates offer ''a full range of training programs from Skin Diver through Instructor Course Director, including certification in oxygen enriched air, semi-closed circuit and closed circuit rebreather diver.'' Nonetheless, NAUI found the proposed condition ambiguous because it ''does not provide a definition of the diving industry or outline any process or criteria to evaluate and recognize a training agency that would establish the legitimacy of its training.''

We agree with NAUI's comment that this provision in the proposed variance was confusing. Additionally, we believe that an employer is in the best position to determine if the training that its divers obtain is adequate to perform their jobs safely and effectively. Therefore, we have revised the proposed provision and have made the training requirement in the permanent variance performance-based; that is, Dixie must ensure that its employees receive training that enables them to perform safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. However, we specified several critical tasks that the recreational diving instructors and diving guides employed by Dixie must be trained to perform safely and effectively, including: Recognizing the effects associated with breathing excessive CO_2 and O_2; taking appropriate action after detecting the effects of breathing excessive CO_2 and O_2; and properly evaluating, operating, and maintaining their open-circuit SCUBAs and rebreathers. We addressed the importance of recognizing and responding properly to the effects of excessive CO_2 and O_2 in our earlier discussions of Conditions A.2 and E of the proposed variance. Based on our review of Ex. 5 (especially pages 11–1 through 11–15), we believe that divers must also know how to evaluate, operate, and maintain their rebreathers under the diving conditions that they encounter as recreational diving instructors and diving guides. We have specified these revisions in Condition 38 of the permanent variance.

Part 3. Comments to Proposed Section III (Rationale for the Proposed Alternative)

(a) In discussing Conditions A and B in the proposed variance, we noted that the existing exemption for recreational diving instructors in paragraph (a)(2)(i) of 29 CFR 1910.401 in our CDO Standard does not refer to rebreathers. We explained that ''such equipment was not available or in common use by recreational diving instructors when OSHA's [CDO] Standard was promulgated in 1977'' (62 FR 58999, first column). A commenter (Ex. 2–109) noted that this statement gave the false impression that rebreather equipment ''is readily used by the recreational diving community.'' Regarding the experience of the recreational diving community with rebreathers, this commenter asserted that ''while the argument can be made that [rebreathers have] been used safely within the scientific and commercial diving industries, it can also be argued that those divers are more highly trained and the operations more closely monitored than is the norm in the recreational diving industry.''

Our discussion of the rationale for Conditions A and B as proposed noted that ''data related to the reliability and safety of [rebreather equipment] are difficult to obtain because its use by recreational divers is still uncommon''; however, we now believe that data are available showing that recreational diving instructors and diving guides can use rebreathers safely and reliably. We revised our opinion after reviewing Ex. 5 (especially pages 2–2, 7–1, and 7–2), which shows that various military organizations have a 50-year history of using rebreathers safely, scientific and technical divers have been doing so for over 20 years, and, currently, recreational diving instructors and diving students safely perform rebreather diving. We believe, therefore, that we have sufficient knowledge about rebreather technology and diving procedures to determine that the conditions specified in the permanent

variance will protect Dixie's recreational diving instructors and diving guides at least as well as having an on-site decompression chamber.

(b) The rationale for proposed Conditions C through E justified the use of DSAT's Oxygen Exposure Table (62 FR 58999, second and third columns). This rationale elicited one comment (Ex. 2–109). This commenter stated that specifying time limits in the DSAT Oxygen Exposure Table in terms of total dive time ''is * * * a very common industry practice and not some great concession on Dixie's part, as the wording of the sentence would perhaps lead you to believe.'' In this case, we agree that the use of a common industry practice will enable Dixie to comply with the permanent variance without additional effort, while providing adequate diver protection.

(c) Proposed Condition K provided a rationale for using dive-decompression computers, noting that no-decompression limits for repetitive dives can involve ''tedious and time-consuming calculations * * * made by hand.'' It concluded that dive-decompression computers would ''assist divers in decreasing their exposure to excessive ascent rates, oxygen toxicity, and DCS that could result from errors in calculating repetitive no-decompression diving schedules manually.'' (62 FR 59000, third column.) The single commenter (Ex. 2–109) on this point claimed that manual calculations ''[can be] taught in the first or second lecture of most entry-level [SCUBA] classes'' and performed in a couple of minutes. This commenter also asserted that manual calculations may provide an additional margin of safety from DCS because they typically determine decompression using the deepest depth attained during a dive. By contrast, dive-decompression computers may reduce decompression (and therefore increase the risk of DCS) by ''measur[ing the] exact depth every few seconds and recalculat[ing decompression] based on actual depth.''

In reply, we note that Condition K as proposed allowed Dixie the flexibility to use either manual calculations or dive-decompression computers. Nevertheless, manual calculation is subject to human error, and computer use can reduce such error. The permanent variance will reduce problems associated with using dive-decompression computers to avoid decompression by restricting the no-decompression limits to the most recent decompression tables and formulas published by NOAA and DSAT.

(d) The rationale for proposed Conditions O and P addressed the requirements for diver certification, noting that ''Condition O provides general uniformity to the diver qualification and training process, as well as quality control over the certifying agencies.'' (62 FR 59001, third column.) A commenter (Ex. 2–109) stated that the certification requirement imposed no burden on Dixie because it was consistent with existing industry practice; in addition, the requirement was unlikely to bring uniformity to diver qualifications because ''different dive stores, certifying under the same national standards, can still turn out divers [and] instructors of varying proficiency levels.'' In reply, we note that we do expect these requirements to make training programs more uniform (than is presently the case) in the way that they train recreational diving instructors and diving guides, and this uniformity should substantially reduce much of the variability in diver proficiency.

Part 4. Comments to Proposed Section VI (Issues)

In the proposal, we invited the public to submit information and specific comments and rationale on nine other issues. Only one commenter (Ex. 2–109) did so. This commenter addressed the first issue, which requested commenters to differentiate the underwater tasks and types of diving performed by recreational diving instructors and diving guides, and to relate these differences to the probability of experiencing diving-related medical problems. The commenter stated that, during training dives, recreational diving instructors ''will probably do multiple ascents * * * but may be exposed to less time in the water than a dive guide since students generally are excited and [consume more air] than experienced divers.'' The commenter stated that, during the ascent-training phase, recreational diving instructors must ''make multiple, generally rapid, ascents with each of the students, increasing the chances of a DCS hit.'' The commenter added that recreational diving instructors are ''at a slightly greater risk [than diving guides] of AGE from the ascents and perhaps a slightly elevated chance of DCS due to rapid ascents,'' although ''[t]he likelihood of the instructor getting DCS or AGE * * * is probably extremely small.''

Regarding diving guides, the commenter asserted that it escorts experienced divers who, typically, are less excitable than novice divers; based on this assumption, the commenter asserted that experienced divers would consume breathing gases at slower rates than novice divers. The commenter concluded that slow rates of gas consumption would extend dive durations which, combined with the deeper dives made by diving guides compared to recreational diving instructors, would increase the diving guides' risk of DCS. In response to this commenter, we refer to our earlier discussion of this issue in Part I. In this discussion, we agreed that ''using high-O_2 nitrox breathing-gas mixtures would increase the risk of DCS,'' but concluded that ''the resulting risk would be comparable to using the equivalent partial pressure of nitrogen in air for that extended period.''

Part 5. General Comments to the Proposed Variance

One commenter (Ex. 2–105) indicated that a number of topics needed clarification or were ''so controversial or comprehensive in nature that this level of detail in a policy document may not be appropriate.'' These areas are: Validating dive-decompression computers, including the programmable safety factors used in these computers; updating decompression data; identifying programmable gas-percentage options; using failure mode and effects analysis of critical components and assemblies to develop consensus regarding the general safety and accuracy of dive-decompression computers; determining the relevance of, and necessity for, monitoring environmental temperatures and the breathing-loop gases in closed-circuit rebreathers; and recognizing standards developed by the equipment manufacturers. The commenter stated that ''[t]o expand on just a few of [these areas] would make this document much [too long].'' Nevertheless, the commenter asserted, without explanation, that ''from a standpoint of technical diving facts [the proposed variance] is grossly inaccurate and in many cases written with twisted facts,'' and that the ''[proposed] variance as written has the potential to expose employees (*i.e.*[,] dive shop technicians, instructors) to dangerous situations.''

In large part, these areas of concern address the safety and standardization of dive-decompression computers. Under the permanent variance, use of dive-decompression computers is optional; however, if Dixie uses these computers, it must also provide its divers with specific decompression information. Regardless of computer use or availability, Dixie must have hard-copy decompression tables at the dive site. Thus, the permanent variance specifies the conditions that Dixie must meet to ensure that its employees' diving activities conform to accepted

no-decompression practices, whether or not Dixie uses dive-decompression computers.

Another commenter (Ex. 2–109) stated that ''[t]o retailers * * * nitrox is marketed as a new profit center. In an industry with flat growth over the past few years, and where profit margins are small to begin with, nitrox * * * can be sold to the diving consumer as a 'safer' alternative to air, thus generating more profits * * * through the sale of classes and equipment specific to nitrox.'' Regarding diving safety, this commenter asserted that the high level of diving skills acquired by commercial divers made them safer than recreational diving instructors and diving guides, and referred to statistics from the Divers Alert Network (DAN) to support this assertion:

> [T]he statistics [for 1996] show that 0.2% of the reported accidents involved commercial divers, but 17.1% of the accidents involved Instructors or Divemasters (dive guides). The latter are the same two categories * * * who make up Dixie Diver's employees who would be exempt under the variance. In 1995, the numbers were 0.5% for commercial divers versus 15.9% for instructors[-] divemasters. In 1994, the numbers were 0.0% for commercial divers and 21.5% for instructors[-]divemasters.

The statistics cited by this commenter do not address the principal conditions specified in the permanent variance (*i.e.*, recreational diving instructors and diving guides who make no-decompression dives using nitrox breathing-gas mixtures). In a recent editorial in *Alert Diver* (Ex. 16, page 2), DAN's director (Dr. Peter B. Bennett) addressed the safety of nitrox dives made by recreational divers (which includes sports divers, as well as recreational diving instructors and diving guides). Dr. Bennett stated that ''[b]etween 1990 and 1993 DAN collected data on 21 cases of mixed-gas diving injuries. In 1994 there were 10, and in 1996, 16 injuries occurred. The 1996 data [are] based on 23 nitrox or mixed-gas injuries requiring recompression treatment. * * * The International Association of Nitrox and Technical Divers * * * certified 17,780 U.S. nitrox divers from 1985 to 1996.'' Based on this information, an average of less than 0.001 per cent of recreational divers who use nitrox breathing-gas mixtures are injured each year. Additionally, both Dr. Bennett (Ex. 16, pages 2 and 6) and other DAN representatives (Ex. 4A, page 60) admit that valid comparisons cannot be made between different categories of divers because adequate baseline data (e.g., the number and types of dives made by all divers in a category) are not available.

In conclusion, we believe that the protections afforded by the conditions specified in the permanent variance will reduce the prevalence of diving-related injuries among Dixie's recreational diving instructors (who also have substantial experience in using nitrox breathing-gas mixtures) below the already low injury rates cited in Dr. Bennett's editorial.

Part 6. Our Revisions to the Proposed Variance

(a) When divers use rebreathers, proposed Condition A.4 provided for a supplemental supply of breathable gas during emergency egress (referred to as the ''bail-out system''); this supply would consist of a diluent breathing gas connected to the second stage of the regulator. We have added a phrase to the permanent variance to address alternative means of emergency egress when open-circuit SCUBA provides the nitrox breathing-gas mixture. It allows Dixie to use the reserve breathing-gas supplies specified in paragraph (c)(4) of 29 CFR 1910.424 for this purpose. This alternative, specified in Condition (30)(b)(i) in the permanent variance, is an existing requirement for open-circuit SCUBA.

When the bail-out system consists of a separate supply of emergency breathing gas, Condition A.1 of the proposed variance permitted Dixie to use air as the emergency breathing gas. The permanent variance retains this provision.

(b) Conditions A.5.a and A.5.b in the proposed variance specified the use of an information module that provides time, depth, ascent, and descent data to divers who use closed-circuit rebreathers, and time, ascent, and descent information to divers who use semi-closed-circuit rebreathers. Proposed Condition A.5.c required both types of rebreathers to have alarms or visual displays that warn the diver about excessive ascent and descent rates, as well as depth levels that are shallower than the ceiling-stop depth. While Dixie's recreational diving instructors and diving guides could use dive-decompression computers for this purpose, we believe that such computers are unnecessary because the divers will be diving within no-decompression limits, and the technical capability of dive-decompression computers exceeds the requirements of no-decompression dives. An information module that provides the divers with the specified dive information will permit them to remain within no-decompression limits and to descend and ascend the water column at the rates specified by the diving tables. We believe, therefore, that the information module will ensure that Dixie's divers remain as safe as they would if they used dive-decompression computers.

(c) Proposed Condition A.5.c also requires that, for both semi-closed-circuit and closed-circuit rebreathers, the information module must warn the diver of low battery voltage. As noted in Ex. 5 (page P–59), a partial or total electronic failure interferes with sensor and control systems and may have serious safety consequences for the diver. We believe that the diver's safety depends on properly-operating electrical power supplies and electrical and electronic circuits. Accordingly, we have revised the proposal by requiring that Dixie perform the following procedure: ''Before each day's diving operations, and more often when necessary, * * * ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions.'' Condition (12) of the permanent variance contains this revision.

(d) Proposed Conditions B.1 and G.1.c addressed O_2 sensor and control requirements for closed-circuit rebreathers. Conditions (13) through (17) in the permanent variance consolidate these requirements in a single location.

(e) For closed-circuit rebreathers, proposed Condition G.1.c specifies the use of O_2 sensors to assess the O_2 fraction in the breathing loop, while proposed Condition G.1.d requires Dixie to determine (i.e., calibrate) sensor accuracy according to the rebreather manufacturer's instructions. As noted in the proposal, maintaining accurate O_2 partial pressures in the breathing loop is critical to diver health and safety. To assure safe operation of O_2 sensors, we believe that the permanent variance must specify the frequency for assessing the accuracy of O_2 sensors. Such an approach is consistent with the rebreather community's use of regular diving-equipment assessments (see Ex.5, pages 4–1 through 4–13, and 14–2). Condition (15) of the permanent variance, therefore, requires that ''[b]efore each day's diving operations, and more often when necessary, [Dixie] must calibrate O_2 sensors as required by the sensor manufacturer's instructions[.]'' Removing inaccurate O_2 sensors from service and replacing them with correctly-calibrated sensors is a logical and expected consequence of the calibration process; we are specifying this requirement in Conditions (15)(d) and (15)(e) of the permanent variance.

(f) Proposed Condition G.1.c accepted O_2 sensors only if they were electromechanical. Evidence in the record (Ex. 5, page 5–11) indicates that O_2-sensor technology is undergoing continued development and refinement. We believe, therefore, that specifying ''electromechanical'' O_2 sensors is too limiting, and we have revised this provision to specify that Dixie must use O_2 sensors approved by the rebreather manufacturer (see Condition (14)(b) in the permanent variance).

(g) Condition G.1.d in the proposed variance required Dixie to maintain the accuracy of the equipment used to analyze O_2 in the breathing-gas mixture ''in accordance with the manufacturer's instructions.'' We intended this requirement to apply to the analytic equipment used both to calibrate O_2 sensors and to determine the O_2 fraction in nitrox breathing-gas mixtures. To clarify this intention, we have included the requirement separately in Conditions (15)(b) and (22)(b) in the permanent variance.

(h) We have clarified the provision in proposed Condition G.2.a that addressed the analysis of O_2 in nitrox breathing-gas mixtures obtained from commercial suppliers. This revision requires Dixie to ensure that the supplier of the mixture analyzes the O_2 fraction in the mixture in the charged tank after disconnecting the tank from the charging apparatus. This clarification prevents the supplier from using the O_2 sensor on the charging apparatus for this purpose, a procedure that could result in an incorrect determination. The revised provision is in Condition (23)(b) of the permanent variance.

(i) Proposed Conditions K.3 and K.4 required that Dixie maintain a diving log and decompression tables at the dive site. The diving log documents the critical dive parameters. Divers who do not use dive-decompression computers must use the decompression tables; the tables also serve as a back-up resource to divers with dive-decompression computers. We have revised the proposed conditions to ensure that Dixie maintains a diving log and decompression tables at the dive sites for all diving operations covered by the permanent variance, whether or not its divers use a dive-decompression computer. The revised provision also clarifies that the decompression tables must be hard copies and conform to the no-decompression limits specified in Condition (28) of the permanent variance. Condition (37) of the permanent variance contains the revised requirements.

(j) Regarding the term ''portable oxygen,'' proposed Condition M specified that ''the oxygen shall be available for administration to the diver during the entire period the diver is being transported to a decompression chamber.'' The O_2 supplied for this purpose must be pure O_2, and the injured diver must receive the O_2 continuously from the time Dixie detects the diving-related medical emergency until the diver begins treatment in a decompression chamber. We have revised the proposal to clarify these requirements. Therefore, Condition (33) in the permanent variance requires Dixie to ensure that the portable O_2 equipment supplies pure O_2 to the injured diver's transparent mask, and that sufficient O_2 is available to treat injured divers until they reach a decompression chamber.

(k) In the proposed variance, one provision (Condition G.1.d) required Dixie to maintain the accuracy of the equipment used to analyze the O_2 fraction of the breathing gas ''in accordance with the manufacturer's instructions.'' To clarify which manufacturer is being addressed in this provision, we revised the relevant conditions of the permanent variance (Conditions (15)(b) and (22)(b)) to refer specifically to the manufacturer of the O_2 analyzer (who seems to us to be in the best position to specify how its O_2 analyzer should be calibrated). We have made similar revisions to other provisions of the permanent variance, including Condition (9) (which specifies calibration requirements for CO_2 sensors) and to Condition (15) (which specifies the calibration requirement for O_2 sensors).

The permanent variance contains a general requirement (Condition (3)) to use rebreathers according to the manufacturer's instructions. We repeat this requirement in several other important conditions of the permanent variance. We have added this provision because SCUBA manufacturers select and develop the characteristics and parameters of SCUBA equipment, design and integrate the equipment accordingly, procure or manufacture the equipment components, and then assemble and test the final products. There is a wide range of SCUBA designs and capabilities, and there are no uniform standards for the design, function, and use of SCUBA. We believe, therefore, that the SCUBA manufacturer is in the best position to specify the components, configuration, and operation of its product. In addition, the rebreather conference held recently in Redondo Beach, California, recommended that ''[m]anufacturers must provide written procedures, pre and post dive checklists, and a schedule for required maintenance.'' The SCUBA manufacturers who attended the conference endorsed this recommendation (see Ex. 5, page 14–2).

V. Decision

Dixie Divers, Inc. seeks a permanent variance from the decompression-chamber requirements of paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426. These provisions require an employer to have a decompression chamber available and ready for use at the dive site to treat two diving-related medical emergencies that employees may experience—decompression sickness (DCS) and arterial-gas embolism (AGE). Divers may develop DCS after decompressing inadequately during dives in which they breathe a mixed gas (*e.g.,* nitrox). AGE results from overpressurizing the lungs, usually during a rapid ascent to the surface; overpressurization causes the air sacs in the lungs to rupture and disperse bubbles into the pulmonary veins.

These decompression-chamber provisions require employers to ensure that: Employees remain awake and in the vicinity of a decompression chamber for at least one hour after the dive whenever they make no-decompression dives, dive to depths deeper than 100 feet of sea water, or use a mixed-gas breathing mixture (paragraph (b)(2) of 29 CFR 1910.423); and a decompression chamber is located within five minutes from the dive site and is ready for use (paragraph (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426).

In its variance application, Dixie stated that nitrox breathing-gas mixtures reduce the occurrence and severity of DCS, while the equipment and procedural safeguards specified in the variance application lower the risk of AGE. (See section II, ''Application for a Permanent Variance,'' of this notice for a thorough review of Dixie's variance application.) Dixie asserted that the risk of DCS and AGE for divers who use the SCUBA equipment and diving procedures proposed in the variance application would be equal to, or less than, that experienced by divers exempted from our CDO Standard. This exemption, specified in paragraph (a)(2)(i) of 29 CFR 1910.401, applies to recreational diving instructors who use compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. Dixie concluded, therefore, that we should not require it to maintain a decompression chamber at the dive site if it complies with the

conditions proposed in the variance application.

After reviewing the variance application, comments made to the record about the application, and other technical and scientific information submitted to the record, we have revised the proposed variance to require Dixie to use specific procedures and equipment safeguards for its divers when they engage in recreational diving instruction and perform services as diving guides. Therefore, under § 6(d) of the OSH Act, and based on the record discussed above, we find that when Dixie complies with the conditions of the following order, its divers will be exposed to working conditions that are at least as safe and healthful as they would be if Dixie complied with paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426.

VI. Order

We issue this order authorizing Dixie Divers, Inc. to comply with the following conditions instead of complying with paragraphs (b)(2) and (c)(3)(iii) of 29 CFR 1910.423 and paragraph (b)(1) of 29 CFR 1910.426:

Application of the Permanent Variance

(1) This permanent variance applies only to the recreational diving instructors and diving guides (''divers'') employed by Dixie Divers, Inc. (designated as ''you'' or ''your'') when your:

(a) Recreational diving instructors train diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA) during these training dives;

(b) Diving guides lead small groups of trained sports divers who use open-circuit, semi-closed-circuit, or closed-circuit SCUBAs to local undersea diving locations for recreational purposes; and

(c) Divers use a nitrox breathing-gas mixture consisting of a high percentage of oxygen (O_2) (i.e., over 22 percent (22%) by volume) mixed with nitrogen and supplied by an open-circuit, semi-closed-circuit, or closed-circuit SCUBA.

(2) This permanent variance does not apply when your divers engage in diving activities other than recreational diving instruction or diving guide duties.

Equipment Requirements for Rebreathers

(3) You must ensure that your divers use rebreathers (*i.e.,* semi-closed-circuit and closed-circuit SCUBAs) in accordance with the rebreather manufacturer's instructions.

(4) Regarding CO_2-sorbent materials in canisters:

(a) You must ensure that each rebreather uses a manufactured (i.e., commercially pre-packed), disposable scrubber cartridge containing a CO_2-sorbent material that:

(i) Is approved by the rebreather manufacturer;

(ii) Removes CO_2 from your divers' exhaled gas; and

(iii) Maintains the CO_2 level in the breathable gas (*i.e.,* the gas that your divers are inhaling directly from the regulator) below a partial pressure of 0.01 atmospheres absolute (ATA); or

(b) You may use an alternative scrubber method if:

(i) The rebreather manufacturer permits such use;

(ii) You use the alternative method according to the rebreather manufacturer's instructions; and

(iii) You demonstrate that the alternative method meets the requirements specified above in Condition (4)(a) of this order.

(5) You must ensure that each rebreather has a counterlung that supplies a volume of breathing gas to your divers that is sufficient to sustain their respiration rate and contains an over-pressure valve.

(6) You must ensure that each rebreather uses a moisture trap in the breathing loop, and that the moisture trap and its location in the breathing loop are approved by the rebreather manufacturer.

(7) You must ensure that each rebreather has a continuously-functioning moisture sensor that connects to a visual (e.g., digital, graphic, or analog) or auditory (e.g., voice, pure tone) alarm that warns your divers of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface.

(8) You must ensure that each rebreather contains a continuously-functioning CO_2 sensor in the breathing loop, and that the CO_2 sensor and its location in the breathing loop are approved by the rebreather manufacturer. You must also integrate the CO_2 sensor used in a rebreather with an alarm that:

(a) Operates in a visual (e.g., digital, graphic, or analog) or auditory (e.g., voice, pure tone) mode;

(b) Is readily detectable by your divers under the diving conditions in which they operate; and

(c) Remains continuously activated when the inhaled CO_2 level reaches and exceeds 0.005 ATA.

(9) Before each day's diving operations, and more often when necessary, you must calibrate the CO_2 sensor according to the sensor manufacturer's instructions. In doing so, you must:

(a) Ensure that the equipment and procedures used to perform this calibration are accurate to within 10 percent (10%) of a CO_2 concentration of 0.005 ATA or less;

(b) Maintain this accuracy as required by the sensor manufacturer's instructions;

(c) Ensure that the calibration of the CO_2 sensor demonstrates an accuracy to within 10 percent (10%) of a CO_2 concentration of 0.005 ATA or less;

(d) Replace the CO_2 sensor when it fails to meet the accuracy requirements specified above in Condition (9)(c) of this order; and

(e) Ensure that the replacement CO_2 sensor meets the accuracy requirements specified above in Condition (9)(c) of this order before you place a rebreather in operation.

(10) As an alternative to using a continuously-functioning CO_2 sensor, you may use schedules for replacing CO_2-sorbent material provided by the rebreather manufacturer. You may use these CO_2-sorbent replacement schedules only if:

(a) The rebreather manufacturer has:

(i) Developed the replacement schedules according to the canister-testing protocol provided below in Appendix A of this order;

(ii) Analyzed the canister-testing results using the statistical procedures described in U.S. Navy Experimental Diving Unit Report 2–99 (see section VII (''References'') below); and

(iii) Specified the replacement schedule in terms of the lower prediction line (or limit) of the 95% prediction interval. In this regard, the rebreather manufacturer may derive replacement schedules by interpolating among, but not by extrapolating beyond, the depth, water temperatures, and exercise levels used during canister testing; and

(b) You replace the CO_2-sorbent material in the canister as required by Condition (4) of this order.

(11) You must ensure that each rebreather has an information module that provides:

(a) Visual (*e.g.,* digital, graphic, or analog) or auditory (*e.g.,* voice, pure tone) displays that will effectively warn your divers of solenoid failure (when the rebreather uses solenoids) and other electrical weaknesses or failures (*e.g.,* low battery voltage);

(b) For semi-closed circuit rebreathers, visual displays for the partial pressure of CO_2, or deviations

above and below a preset CO_2 partial pressure of 0.005 ATA; and

(c) For closed-circuit rebreathers:

(i) Visual displays for the partial pressures of O_2 and CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA and a preset O_2 partial pressure of 1.40 ATA; and

(ii) A visual display for the gas temperature in the breathing loop.

(12) Before each day's diving operations, and more often when necessary, you must ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions.

Special Requirements for Closed-Circuit Rebreathers

(13) You must ensure that closed-circuit rebreathers use supply-pressure sensors for the O_2 and diluent (i.e., air or nitrogen) gases and continuously-functioning sensors for detecting temperature in the inhalation side of the gas-loop and the ambient water.

(14) You must ensure that:

(a) At least two O_2 sensors are located in the inhalation side of the breathing loop;

(b) The O_2 sensors are continuously-functioning, temperature-compensated, and approved by the rebreather manufacturer.

(15) Before each day's diving operations, and more often when necessary, you must calibrate O_2 sensors as required by the sensor manufacturer's instructions. In doing so, you must:

(a) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1 percent (1%) of the O_2 fraction by volume;

(b) Maintain this accuracy as required by the manufacturer of the calibration equipment;

(c) Ensure that the sensors are accurate to within 1 percent (1%) of the O_2 fraction by volume;

(d) Replace O_2 sensors when they fail to meet the accuracy requirements specified above in Condition (15)(c) of this order; and

(e) Ensure that the replacement CO_2 sensors meet the accuracy requirements specified above in Condition (15)(c) of this order before you place a rebreather in operation.

(16) You must ensure that closed-circuit rebreathers have:

(a) A gas-controller package with electrically-operated solenoid O_2-supply valves;

(b) A pressure-activated regulator with a second-stage diluent-gas addition valve;

(c) A manually-operated gas-supply bypass valve to add O_2 or diluent gas to the breathing loop; and

(d) Separate O_2 and diluent-gas cylinders to supply the breathing-gas mixture.

O_2 Concentration in the Breathing Gas

(17) You must ensure that the fraction of O_2 in the nitrox breathing-gas mixture:

(a) Is greater than the fraction of O_2 in compressed air (i.e., exceeds 22 percent (22%) O_2 by volume);

(b) For open-circuit SCUBA, never exceeds a maximum fraction of breathable O_2 of 40 percent (40%) by volume or a maximum O_2 partial pressure of 1.40 ATA, whichever exposes your divers to less O_2; and

(c) For rebreathers, never exceeds a maximum O_2 partial pressure of 1.40 ATA.

Depth and O_2 Partial Pressure Limits

(18) Regardless of the diving equipment your divers use, you must ensure that they dive no deeper than 130 feet of sea water (fsw) or to a maximum O_2 partial pressure of 1.40 ATA, whichever exposes them to less O_2.

(19) Regarding O_2 exposure, you must:

(a) Ensure that the exposure of your divers to partial pressures of O_2 between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure time limits specified either by the 1991 National Oceanic and Atmospheric Administration Diving Manual (the ''1991 NOAA Diving Manual'') or by the report entitled *Enriched Air Operations and Resources Guide,* published in 1995 by the Professional Association of Diving Instructors (known commonly as the ''1995 DSAT Oxygen Exposure Table'') (see section VII (''References'') below); and

(b) Determine your diver's O_2-exposure duration using the diver's maximum O_2 exposure (partial pressure of O_2) during the dive and the total dive time (*i.e.,* from the time the diver leaves the surface until the diver returns to the surface).

Mixing and Analyzing the Breathing Gas

(20) You must ensure that only properly trained personnel mix nitrox breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture.

(21) When mixing nitrox breathing gases, you must mix the appropriate breathing gas before you deliver the mixture to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 1991 NOAA Diving Manual, or using a filter-membrane system.

(22) Before the start of each day's diving operations, you must determine the O_2 fraction of the breathing-gas mixture using an O_2 analyzer. In doing so, you must:

(a) Ensure that the O_2 analyzer is accurate to within 1 percent (1%) of the O_2 fraction by volume; and

(b) Maintain this accuracy as required by the manufacturer of the analyzer.

(23) When the breathing gas is a commercially-supplied nitrox breathing-gas mixture, you must ensure that the supplier:

(a) Determines the O_2 fraction in the breathing-gas mixture using an analytic method that is accurate to within 1 percent (1%) of the O_2 fraction by volume;

(b) Makes this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus;

(c) Documents the O_2 fraction in the mixture; and

(d) Provides you with a written certification of the O_2 analysis.

(24) For commercially-supplied nitrox breathing-gas mixtures, you must ensure that the O_2 is Grade A (also known as ''aviator's oxygen'') or Grade B (referred to as ''industrial-medical oxygen''), and meets the specifications, including the purity requirements, found in the 1991 NOAA Diving Manual. In doing so, you must:

(a) Ensure that the analytic method used to make this determination is accurate to within 1 percent (1%) of the O_2 fraction by volume; and

(b) Obtain a written certificate to this effect from the supplier.

(25) Before producing nitrox breathing-gas mixtures using a compressor in which the gas pressure in any system component exceeds 125 pounds per square inch (psi), you must:

(a) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(b) Ensure that the compressor is oil-less or oil-free and rated for O_2 service unless you comply with the requirements of Condition (26) of this order; and

(c) Ensure that the compressor meets the requirements specified in paragraphs (i)(1) and (i)(2) of 29 CFR 1910.430 whenever the highest O_2 fraction used in the mixing process exceeds 40 percent (40%).

(26) Before producing nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with O_2, regardless of the

gas pressure in any system component you must:

(a) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(b) Filter the high-pressure air to produce O_2-compatible air;

(c) Have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing O_2-compatible air;

(d) Continuously monitor the air downstream from the filter for hydrocarbon contamination; and

(e) Use only uncontaminated air (i.e., air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture.

(27) You must ensure that diving equipment using nitrox breathing-gas mixtures or pure O_2 under high pressure (i.e., exceeding 125 psi) conforms to the O_2-service requirements specified in paragraphs (i)(1) and (i)(2) of 29 CFR 1910.430.

Use No-Decompression Limits

(28) For diving conducted while using nitrox breathing-gas mixtures, you must ensure that each of your divers remains within the no-decompression limits specified for single and repetitive air diving and published in the 1991 NOAA Diving Manual or the report entitled *Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner,* published in 1994 by Hamilton Research Ltd. (known commonly as the ''1994 DSAT No-Decompression Tables'') (see section VII (''References'') below).

(29) You may permit your divers to use a dive-decompression computer designed to regulate decompression if the dive-decompression computer uses the no-decompression limits specified above in Condition (28) of this order and provides output that reliably represents those limits.

Emergency Egress

(30) Regardless of the diving equipment your divers use (i.e., open-circuit SCUBA or rebreathers), you must ensure that the diving equipment consists of:

(a) An open-circuit emergency-egress system (a ''bail-out'' system) in which:

(i) The second stage of the regulator connects to a separate supply of emergency breathing gas; and

(ii) The emergency breathing gas consists of air or the same nitrox breathing-gas mixture used during the dive; or

(b) One of the following alternative bail-out systems:

(i) For open-circuit SCUBAs, the emergency-egress systems specified in paragraph (c)(4) of 29 CFR 1910.424; or

(ii) For semi-closed-circuit and closed-circuit rebreathers, a system configured so that the second stage of the regulator connects to a diluent supply of emergency breathing gas.

(31) You must ensure that the bail-out system performs reliably and provides sufficient emergency breathing gas to enable your diver to terminate the dive and return safely to the surface.

Diving-Related Medical Emergencies

(32) Before each day's diving operations, you must ensure that:

(a) A hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a state, county, or municipal agency) are available for diving-related medical emergencies;

(b) These treatment resources are available when you notify them of the diving-related medical emergency;

(c) A list of telephone or call numbers for these health-care professionals and facilities is readily available at the dive site; and

(d) Transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver your injured diver to the decompression chamber within two (2) hours travel time from the dive site.

(33) You must ensure that portable O_2 equipment is available at the dive site to treat your injured divers. In doing so, you must ensure that:

(a) This equipment delivers pure O_2 to a transparent mask that covers the injured diver's nose and mouth; and

(b) Sufficient O_2 is available for administration to the injured diver from the time you recognize the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment.

(34) Before each day's diving operations, you must:

(a) Ensure that at least two individuals, either employees or non-employees, qualified in first-aid and administering O_2 treatment are available at the dive site to treat diving-related medical emergencies; and

(b) Verify their qualifications for this task.

Diving Logs and Decompression Tables

(35) You must maintain a diving log at the dive site and ensure that:

(a) Before starting each day's diving operations, the individual who verifies the availability of the treatment resources required above under Condition (32) of this order makes a signed entry to this effect in the diving log; and

(b) The diving log contains the following information for each dive:

(i) The time when the diver left the surface, left the bottom, and returned to the surface;

(ii) The maximum depth of the dive; and

(iii) If a diver uses a dive-decompression computer, the name of the manufacturer and the model and serial numbers.

(36) Before starting each day's diving operations, you must:

(a) Designate an employee or a non-employee to make the entries in the diving log; and

(b) Verify that the designee understands the:

(i) Diving and medical terminology required to make proper entries; and

(ii) Procedures for making entries in the diving log.

(37) You must ensure that a hard-copy of the decompression tables used for the dives (as specified above in Condition (28) of this order) is readily available at the dive site, whether or not your divers use dive-decompression computers.

Diver Training

(38) You must ensure that your divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Accordingly, your divers must be able to perform critical tasks safely and effectively, including, but not limited to:

(a) Recognizing the effects of breathing excessive CO_2 and O_2;

(b) Taking appropriate action after detecting the effects of breathing excessive CO_2 and O_2; and

(c) Properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter.

The Order: Notification and Duration

(39) You must notify the divers affected by this order using the same means that you used to inform them of the variance application.

(40) This order remains effective until modified or revoked under section 6(d) of the Occupational Safety and Health Act of 1970.

Appendix A (Mandatory).—Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters

If the employer replaces CO_2-sorbent material using a schedule provided by

the rebreather manufacturer (hereafter, manufacturer), then the employer must ensure that the manufacturer developed the schedule according to the protocol specified below in this appendix. The employer must also: Use only the CO_2-sorbent material specified by the manufacturer (and that is consistent with the requirements of Condition 10(b)(ii) of this order); ensure that the manufacturer analyzes the canister-duration results using the statistical analysis specified in U.S. Navy Experimental Diving Unit (NEDU) Report 2–99 (see Section VII (''References'') of the permanent variance); and ensure that the manufacturer specifies the replacement schedule in terms of the lower prediction line (or limit) of the 95% prediction interval.

1. The manufacturer must use the following procedures to ensure that the CO_2-sorbent material meets the specifications of the material's manufacturer: NATO CO_2 absorbent-activity test; RoTap shaker and nested sieves to determine granule-size distribution; NEDU-derived Schlegel test to assess friability; and NEDU's MeshFit software to evaluate mesh size conformance to specifications.

These procedures involve a quality-control assessment of the CO_2-sorbent material. Canister durations are suspect if these procedures indicate that the CO_2-sorbent material used in canister testing either exceeds or falls below the specifications provided by the material's manufacturer. Therefore, for the purposes of this canister-testing protocol, rebreather manufacturers must use only CO_2-sorbent materials that meet the specifications provided by the material's manufacturer.

2. While operating the rebreather at a maximum depth of 130 feet of sea water (fsw), the manufacturer must use a breathing machine to continuously ventilate the rebreather with breathing gas that is at 100% humidity and warmed to a temperature of 98.6 degrees F (37 degrees C) in the heating-humidification chamber. The breathing gas must be a nitrox mixture, with the oxygen (O_2) fraction maintained at 0.28 (equivalent to 1.4 ATA of O_2 at 130 fsw, the maximum O_2 concentration permitted at this depth by the permanent variance); the manufacturer must measure the O_2 concentration of the inhalation breathing gas delivered to the mouthpiece.

3. The manufacturer must test canisters using the following three ventilation rates (with required breathing-machine tidal volumes and frequencies, and CO_2-injection rates, provided for each ventilation rate):

Ventilation rates (liters/min., ATPS [1])	Breathing-machine tidal volumes (liters)	Breathing machine frequencies (breaths per min.)	CO_2–injection rates (liters/min., STPD [2])
22.5	l.5	15	0.90
40.0	2.0	20	1.35
62.5	2.5	25	2.25

[1] ATPS means ambient temperature and pressure, saturated with water.

[2] STPD means standard temperature and pressure, dry; the standard temperature is 0 degrees C.

The manufacturer must perform the CO_2 injection at a constant (steady) and continuous rate during each testing trial. An employer cannot use a rebreather at a work rate higher than the work rates simulated in this testing protocol unless the manufacturer adds the appropriate combinations of ventilation-CO_2-injection rates to the protocol.

4. The manufacturer must determine canister duration using a minimum of four (4) water temperatures, including 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively). An employer cannot use a rebreather at a water temperature that is lower than the minimum, or higher than the maximum, water temperature used in this testing protocol unless the manufacturer adds a lower or higher temperature to the protocol.

5. The manufacturer must monitor the breathing-gas temperature at the rebreather mouthpiece (at the ''chrome T'' connector) and ensure that this temperature conforms to the temperature of a diver's exhaled breath at the water temperature and ventilation rate used during the testing trial. (NEDU can provide the manufacturer with information on the temperature of a diver's exhaled breath at various water temperatures and ventilation rates, as well as techniques and procedures used to maintain these temperatures during the testing trials.)

6. Testing must consist of at least eight (8) testing trials for each combination of temperature and ventilation-CO_2-injection rates. (For example, eight testing trials at 40 degrees F using a ventilation rate of 22.5 lpm at a CO_2-injection rate of 0.90 liters/min.) While water temperature may vary slightly (± 2.0 degrees F or 1.0 degree C) between each of the eight testing trials, the manufacturer must maintain strict control of water temperature (± 1.0 degree F or 0.5 degree C) within each testing trial. The rebreather manufacturer must use the average temperature for each set of eight testing trials in the statistical analysis of the resulting data.

7. The testing-trial result is the time taken for the inhaled breathing gas to reach 0.005 ATA of CO_2. Using the canister-duration results from these testing trials, the rebreather manufacturer must: Analyze the canister-duration results using the repeated-measures statistics described in NEDU Report 2–99 (see Section VII (''References'') of the permanent variance); and specify the replacement schedule for CO_2-sorbent materials in terms of the lower prediction line (or limit) of the 95% confidence interval.

VII. References

This order cites the following references:

(1) National Oceanic and Atmospheric Administration (1991). NOAA Diving Manual: Diving for Science and Technology. U.S. Government Printing Office, Washington, D.C.

(2) Diving Science and Technology (1995). Analysis of Proposed Oxygen Exposure Limits for DSAT Oxygen Exposure Table Against Existing Database of Manned Oxygen Test Dives. Enriched Air Operations and Resource Guide. International PADI, Inc., Rancho Santa Margarita, California.

(3) R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann (1994). Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner. Hamilton Research, Ltd., Tarrytown, New York.

(4) J. R. Clarke. ''Statistically Based CO_2 Canister Duration Limits for Closed-Circuit

Underwater Breathing Apparatus.'' U.S. Navy Experimental Diving Unit, Report 2–99, 1999.

Copies of these references are available from the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2350 or fax (202) 693–1648.

VIII. Authority and Signature

The authority for this order is section 6(d) of the Occupational Safety and Health Act of 1970 (29 USC 655), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1905.

Signed at Washington, DC, this 9th day of December 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

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Monday
December 20, 1999

Part VI

Department of Education

21st Century Community Learning Centers Program; Notice

DEPARTMENT OF EDUCATION

[CFEDA No. 84.287]

21st Century Community Learning Centers Program

AGENCY: Department of Education

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

Purpose of Program: The 21st Century community Learning Centers Program was established by Congress to award grants to rural and inner-city public schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural and recreational needs of the community School-based community learning centers can provide a safe, drug-free, supervised and cost-effective after-school, weekend or summer haven for ch8ildren, youth and their families.

For fiscal year (FY) 2000 we encourage applicants to design projects that focus on the invitational priority in the PRIORITIES section of this application notice.

Eligible Applicants: Only rural or inner-city public elementary or secondary schools, consortia of those schools, or LEAs applying on their behalf, are eligible to receive a grant under the 21st Century Community Learning Centers Program. An LEA considering serving more than one school is encouraged to submit a consortium application on their behalf. Applicants must demonstrate that they meet the statutory program purpose as being either a ''rural'' or ''inner-city'' school or a consortium of such schools.

Applications Available: December 20, 1999.

Deadline For Transmittal of Applications: March 20, 2000.

Deadline for Intergovernmental Review: May 19, 2000.

Available Funds: Approximately $185,000,000.

Estimated Range of Awards: $35,000—$2,000,000, depending on the number of Centers included in each grant application.

Estimated Average Size of Awards; $375,000, for a grant that will support 3 Centers. The average funding for a single Center is $125,000.

Estimated Number of Awards: 350–500, but the actual number will depend on how many awards will assist multiple Centers.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Note: The Department is not bound by an estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. Applicants are strongly encouraged to limit Part III to the equivalent of no more than 20 pages.

Applicable Regulations; (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99, (b) the regulations in 34 CFR part 299.

Priorities

The Absolute Priority and Competitive Priority 1 in the notice of final priorities for this program published in the Federal Register on December 2, 1997 (62 FR 63773) and repeated below, apply to this competition. In addition we give preference to applications that meet Competitive Priority 2 (34 CFR 75.105(c)(2) (ii) and 34 CFR 299.3(a)).

Absolute Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the absolute priority in the next paragraph.

Activities To Expand Learning Opportunities: We fund only those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Invitational Priority

Within the absolute priority, Activities to Expand Learning Opportunities, we are particularly interested in applications that meet the following invitational priority.

Projects in which schools (elementary, middle, or high schools, or some combination) and community-based organizations collaborate to plan and provide services in communities with conditions associated with high drop-out rates, such as high poverty, weak economic and community infrastructures, large or growing numbers of limited English proficient students and adults, and low levels of parental education.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets the invitational priority a competitive or absolute preference over other applications.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i), we give preference to applications that meet one or both of the competitive priorities in the next two paragraphs.

Competitive Priority 1

Projects designed to assist students to meet or exceed State and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children. We award up to five (5) points for projects that address this priority. These points are in addition to the 100 points an application may earn under the selection criteria that will be included in the application package.

Note: It is our experience that successful applicants address the needs of potential drop-outs and students otherwise at risk of academic failure, including students living in poverty and students with limited English proficiency.

Competitive Priority 2

Projects that will use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. We select an application that meets this priority over an application of comparable merit that does not meet this competitive priority.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Program is authorized under Title X, Part I (20 U.S.C. 8241 *et seq.*) of the Elementary and Secondary Education Act. Grantees under this program are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), as listed below:

(1) Literacy education programs;

(2) Senior citizen programs;

(3) Children's day care services;

(4) Integrated education, health, social service, recreational, or cultural programs;

(5) Summer and weekend school programs in conjunction with recreation programs;

(6) Nutrition and health programs;

(7) Expanded library service hours to serve community needs;

(8) Telecommunications and technology education programs for individuals of all ages;

(9) Parenting skills education programs;

(10) Support and training for child day care providers;

(11) Employment counseling, training, and placement;

(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual; and

(13) Services for individuals with disabilities.

Applicants should propose an array of inclusive and supervised services that include extended learning opportunities (such as instructional enrichment programs, tutoring, or homework assistance) but may also include recreational, musical and artistic activities; opportunities to use advanced technology, particularly for those community members who do not have access to computers or telecommunications at home. Grants awarded under this program may be used to plan, implement, or expand community learning centers.

Geographic distribution: In awarding grants, the Secretary assures an equitable distribution of assistance among the States, among urban and rural areas of a State, and among urban and rural areas of the United States.

FOR FURTHER INFORMATION CONTACT: Amanda Clyburn, U.S. Department of Education, 400 Maryland Avenue, SW., room 5W240, Washington, DC 20202. Telephone: (202) 260–3804. E-mail: 21stCCLC@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html.

Or you may contact ED Pubs at its E-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.287.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 8241–8247.

Dated: December 15, 1999.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (EZ)

California: Los Angeles, Oakland, Santa Ana, Riverside County
Connecticut: New Haven
Florida: Miami
Georgia: Atlanta, Cordele
Illinois: Chicago, East St. Louis, Ullin
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Minnesota: Minneapolis
Mississippi: Mid-Delta (Bolivar, Holmes, Humpreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
North Dakota: Lake Agassiz
Ohio: Cleveland, Cincinnati, Columbus
Ohio/West Virginia: Ironton/Huntington
Pennsylvania/New Jersey: Philadelphia, Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge
Tennessee: Knoxville
Texas: Houston, El Paso, Rio Grande Valley (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk/Portsmouth

Enterprise Communities (EC)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock
Arlamsas: East Central (Cross, Lee, Monroe and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles, Huntington, Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville, Orange Cove
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County, Miami, Dade County, Tampa, Immokalee
Georgia: Albany, Central Savannah River (Burke, Hancock, Jefferson, McDuffie, Taliafero, and Warren Counties), Crisp County, Dooley County
Georgia: Albany, Central Savannah River (Burke, Hancock, Jefferson, McDuffie, Taliafero, and Warren Counties), Crisp County, Dooley County
Hawaii: Kaunakakai
Illinois: East St. Louis, Springfield
Indiana: Indianapolis, Austin
Iowa: Des Moines
Kansas: Leoti
Kentucky: Louisville, Bowling Green
Louisiana: Macon Ridge (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta (Madison Parish), Ouachita Parish
Maine: Lewiston
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon, Harrison
Minnesota: Minneapolis, St. Paul
Mississsippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Montana: Poplar
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, La Jicarita (Mora, Rio Arriba, Taos Counties), Deming
New York: Albany, Schenectady, Troy, Buffalo, Newburgh, Kingston, Rochester
North Carolina: Charlotte and Edgecombe, Halifax, Robeson, and Wilson Counties
Ohio: Akron, Columbus, Greater Portsmouth (Scioto County)
Oklahoma: Choctaw and McCurtain Counties, Oklahoma City, Ada
Oregon: Josephine County, Portland
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh, Uniontown
Rhode Island: Providence
South Carolina: Charleston, Williamsburg, Florence County, Hallandale
South Dakota: Beadle, Spink Counties
Tennessee: Fayette, Haywood Counties, Memphis, Nashville, Rutledge
Tennessee/Kentucky: Scott, McCreary Counties
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde
Utah: Ogden

Vermont: Burlington
Virginia: Accomack (Northhampton County), Norfolk
Washington: Lower Yakima County, Seattle, Tacoma, Collie
West Virginia: Charleston, Huntington, McDowell County, West Central Appalachia (Braxton, Clay, Fayette, Nicholas, and Roane Counties)
Wisconsin: Milwaukee, Keshena

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California; comments due by 12-20-99; published 11-19-99
Colorado et al.; comments due by 12-20-99; published 11-19-99
Indiana; comments due by 12-20-99; published 11-18-99
Source-specific plans—
Salt River Pima-Maricopa Indian Community, AZ; comments due by 12-23-99; published 11-23-99
Salt River Pima-Maricopa Indian Community, AZ; comments due by 12-23-99; published 11-23-99
Pesticide programs:
Pesticide container and containment standards; comments due by 12-20-99; published 10-21-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metolachlor; comments due by 12-20-99; published 10-21-99
Pyriproxyfen; comments due by 12-20-99; published 10-21-99
Pyrithiobac sodium salt; comments due by 12-20-99; published 10-20-99
Sethoxydim; comments due by 12-20-99; published 10-21-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3443/P.L. 106–169

Foster Care Independence Act of 1999 (Dec. 14, 1999; 113 Stat. 1822)

Last List December 15, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
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1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
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1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
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1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
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1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
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23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
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200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
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§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

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200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
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43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
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1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
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200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
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200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
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125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
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0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
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136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
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43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
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45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
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41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
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156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
*500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
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48 Chapters:			
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1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
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1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
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50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.